TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 193.

THE OREGON AND CALIFORNIA RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED NOVEMBER 9, 1909.

(18,308.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 186.

THE OREGON AND CALIFORNIA RAILROAD COMPANY APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 10, 1902.

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1 United States Circuit Court of Appeals, Ninth Circuit.

UNITED STATES, Complainant and Appellee,
vs.
OREGON & CALIFORNIA RAILROAD COMPANY, Defendant and Appellant. } No. 2272.

Citation.

To the United States, Greeting:

The Oregon & California Railroad Company having, on this day, been granted an order of appeal to the United States circuit court of appeals for the ninth circuit, from the decree entered June 15th, 1900, in suit No. 2,272, in the circuit court of the United States for the district of Oregon, brought by The United States as complainant against the said company; and the bond on appeal of the said company having been this day filed and approved:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the ninth circuit, at San Francisco, California, on September 3d, 1900, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

2 Given under my hand, at Portland, Oregon, on August 11th, 1900.

CHARLES B. BELLINGER, *Judge.*

Due service admitted on August 11th, 1900.

JOHN H. HALL,
United States Attorney, District of Oregon.

Due service admitted Aug. 22, 1900.

CHAS. J. SCHNABEL,
Attorney for Intervenors and Settlers.

(Endorsed:) No. 2,272. United States circuit court of appeals, ninth circuit. United States *vs.* Oregon & California Railroad Co. Citation. United States circuit court. Filed Aug. 11, 1900. J. A. Sladen, clerk, district of Oregon. Wm. D. Fenton, Portland, Or., and Wm. Singer, Jr., N. E. corner Second and Mission streets, San Francisco, Cal., att'ys for appellant.

In the Circuit Court of the United States for the District of Oregon, October Term, 1895.

Be it remembered, that on the 31st day of January, 1896, there was duly filed in the circuit court of the United States for the district of Oregon, a bill of complaint, in words and figures as follows, to wit:

3 In the Circuit Court of the United States for the District of Oregon. In Equity.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY, Defendant.

Bill of Complaint.

To the honorable judge- of the circuit court of the United States for the district of Oregon, sitting in equity:

The United States of America, by Judson Harmon, its Attorney General, brings this, its bill of complaint, against The Oregon & California Railroad Company, a corporation, organized under and by virtue of the laws of the State of Oregon, and a citizen of said State and district, and complaining says:

I.

That the Congress of the United States, by an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon," approved July 25, 1866, authorized such company, organized under the laws of Oregon as the legisla-
4 ture of said State should thereafter designate, to construct a railroad and telegraph line within the State of Oregon, beginning at the city of Portland and running thence through the Willamette, Umpqua, and Rogue River valleys to the southern boundary of Oregon, there to connect with another railroad authorized in said act to be built in the State of California, and granted to said Oregon Company every alternate section of public land, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile, ten on each side of said railroad, and when any of said alternate sections or parts of sections should be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands designated as aforesaid should be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate section-, and as soon as the said company should file in the office of the Secretary of the Interior a map of survey of said railroad, or any portion thereof not less than sixty continuous miles from either terminus, the Secretary of the Interior should withdraw from sale public lands therein granted on each side of said railroad, so far as located and within the limits above specified; and your orator shows that by a joint resolution adopted October 20, 1868, of the legislature of the State of Oregon, the Oregon Central Railroad Company was designated, in accordance with said last-mentioned act of Congress

as capable of receiving and undertaking the privileges, fran-
5 chises, grants and duties above set forth, and did become the corporation entitled to all the benefits and subject to all the obligations of said act of Congress, and that on or about April 4, 1870, the said Oregon & California Railroad Company, a corporation, duly organized under the laws of Oregon, became the successor and assign of said Oregon Central Railroad Company.

II.

And your orator would further show unto your honors that on the 26th day of March, 1870, the officers of the Oregon & California Railroad Company definitely fixed the line of said railroad authorized by said act of Congress, and filed a plat thereof in the office of the Commissioner of the General Land Office, and presented the same to the then Secretary of the Interior, showing among other things, a route along the line authorized by said act of Congress, approved July 25, 1866, and the Secretary of the Interior did, on said 26th day of March, 1870, in due form, accept said map and directed the withdrawal of the lands opposite the line in question, and the following-described, among other lands in the State of Oregon, were odd-numbered sections or parts of odd-numbered sections of public lands, not mineral, without the place limits and within the indemnity limits of said proposed line of railroad as designated by said map and within the limits of the withdrawal ordered, viz: The north half of the southeast quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section five (5), township fifteen (15) south, range eight (8) west, and the west half of the southeast quarter, and
6 the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section twenty-five (25), township fourteen (14) south, range eight (8) west, and the northeast quarter of the southeast quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, and the northeast quarter of the northwest quarter, and the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-five (25), township fourteen (14) south, range eight (8) west, and the south half of the southeast quarter, and the northwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section thirty-three (33), township fourteen (14) south, range eight (8) west, and the southeast quarter of the northeast quarter of section five (5), township fifteen (15) south, range eight (8) west, and the northwest quarter of the northeast quarter of section seven (7), township fourteen (14) south, range eight (8) west, and the north half of the northwest quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, and the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section nine (9), township fifteen (15) south, range eight (8) west, and the west half of the northeast quarter and the northwest quarter of the southeast quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, and the south half of the southwest quarter and the northwest quarter

of the southwest quarter of section five (5), township fifteen (15) south, range eight (8) west, and the south half of the southeast quarter, and the northeast quarter of the southeast quarter,
7 and the southeast quarter of the northeast quarter of section twenty-seven (27), township twenty-seven (27) south, range eleven (11) west, and the north half of the northwest quarter of section seven (7), township fifteen (15) south, range eight (8) west, of the Willamette meridian.

III.

And your orator would further show unto your honors that on the 15th day of August, 1887, the then Secretary of the Interior, by a departmental order, revoked the said withdrawal of March 26, 1870, and in and by the terms of said revocation order restored the lands above described to the public domain and threw them open for the benefit of homestead and pre-emption entries.

IV.

And your orator would further show unto your honors that the Congress of the United States, by an act entitled "An act to confirm pre-emption and homestead entries of public lands within the limits of railroad grants in cases where such entries have been made under the regulations of the Land Department," approved April 21, 1876, provided, among other things, "that all pre-emption and homestead entries or entries in compliance with any law of the United States of the public lands made in good faith by settlers upon tracts of land of not more than one hundred and sixty acres within the limits of any land grant prior to the time when notice of the withdrawal of the lands embraced in such grant, was received at the local land office of the district in which such lands were situated, or after their restoration to market by order of the General
8 Land Office, and where the pre-emption and homestead laws have been complied with and proper proofs thereof have been made by the parties holding such tracts or parcels, they shall be confirmed and patents for the same shall issue to the parties entitled thereto."

V.

And your orator would further show unto your honors that the final plats of township fourteen (14) and fifteen (15) south, range eight (8) west, of Willamette meridian, were filed in the district land office at Roseburg, Oregon, on the 19th day of October, 1892.

VI.

And your orator would further show unto your honors that the official plats of survey of township twenty-seven (27) south, range eleven (11) west, were filed in the district land office at Roseburg, Oregon, on the 16th day of August, 1892.

VII.

And your orator would further show unto your honors that all of the tracts above described in said township fourteen (14) south, range

eight (8) west, were embraced by indemnity list number twenty-eight (28) of selections of the Oregon & California Railroad Company, which was approved by the district land officers at Roseburg, Oregon, on October 19, 1892.

VIII.

And your orator would further show unto your honors that all of the tracts described in said township fifteen (15) south, range eight (8) west, were embraced by indemnity list number twenty-
9 nine (29) of selections of the Oregon & California Railroad Company, which was approved by the district land officers at Roseburg, Oregon, on October 19, 1892.

IX.

And your orator would further show unto your honors that all of the tracts above described in said township twenty-seven (27) south, range eleven (11) west, were embraced by indemnity list number twenty-seven (27) of selections of the Oregon & California Railroad Company, which was approved by the district land officers at Roseburg, Oregon, on the 16th day of August, 1892.

X.

And your orator would further show unto your honors that on the — day of October, 1878, John Sapp, a duly qualified homestead entryman under the laws of the United States of America, settled upon the north half of the northwest quarter of section seven (7), township fifteen (15) south, range eight (8) west, of the Willamette meridian, with the intention of homesteading the same, and ever since said — day of October, 1878, has continued to reside upon said land and to cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $1,500, and that on the 22d day of October, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said John Sapp, in good faith, made application for filing a homestead, covering
10 said north half of the northwest quarter of section seven (7), township fifteen (15) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office in the State and district of Oregon.

XI.

And your orator would further show unto your honors that on the 28th day of May, 1885, Baxter W. Jenkins, a duly qualified homestead entryman under the laws of the United States of America, settled upon the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of section nine (9), township fifteen (15) south, range eight (8) west, of the Willamette meridian, with the intention of homesteading the same, and ever

since said 28th day of May, 1885, has continued to reside upon said land and to cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $1,500, and that on the 3d day of November, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said Baxter W. Jenkins, in good faith, made application for filing a homestead, covering said southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section nine (9), township fifteen (15) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office in the State and district of Oregon.

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XII.

And your orator would further show unto your honors that on the — day of October, 1869, Charles Heller, a duly qualified homestead entryman under the laws of the United States of America, settled upon the south half of the southeast quarter, and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section twenty-seven (27), township twenty-seven (27) south, range eleven (11) west, of the Willamette meridian, with the intention of homesteading the same, and ever since said — day of October, 1869, and up to the — day of October, 1889, the day of his death, he continued to reside upon and to cultivate the same, and that after his death his widow and children continued to live upon said land, and that he and his said wife and children have made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which improvements aggregate in round numbers the sum of $3,000, and that on the 25th day of October, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, Charles Heller, Jr., one of the sons and heirs-at-law of the said Charles Heller, deceased, duly tendered his filing for the benefit of all the heirs-at-law of said Charles Heller, deceased, as a homestead, covering said south half of the southeast quarter, and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section twenty-seven (27), township twenty-seven (27) south, range
12 eleven (11) west, of the Willamette meridian, at the Roseburg land office in the State and district of Oregon.

XIII.

And your orator further shows unto your honors that on the — day of September, 1889, Charles S. Seely, a duly qualified homestead entryman under the laws of the United States of America, settled upon the north half of the northwest quarter of section nineteen (19) township fourteen (14) south, range eight (8) west, of the Willamette meridian, with the intention of homesteading the same, and ever since the — day of September, 1889, has continued to reside upon said land and to cultivate the same, and has made im-

provements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $700, and that on the 12th day of November, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said Charles S. Seely, in good faith, made application for filing a homestead, covering said north half of the northwest quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office, in the State and district of Oregon.

XIV.

And your orator would further show unto your honors that on the — day of ——, 1878, J. R. Peters, a duly qualified home-
13 stead entryman under the laws of the United States of America, settled upon the northwest quarter of the northeast quarter of section seven (7), township fourteen (14) south, range eight (8) west, of the Willamette meridian, with the intention of homesteading the same, and ever since said — day of ——, 1878, has continued to reside upon said land and to cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $1,500, and that on the 22d day of October, 1892, and within ninety days from the date of filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said J. R. Peters, in good faith, made application for filing a homestead, covering said northwest quarter of the northeast quarter of section seven (7), township fourteen (14) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office in the State and district of Oregon.

XV.

And your orator would further show unto your honors that on the — day of September, 1878, Joseph A. Cox, a duly qualified homestead entryman under the laws of the United States of America, settled upon the south half of the southeast quarter, and the northwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section thirty-three (33), township fourteen (14) south, range eight (8) west, of the Willamette meridian, with the intention of homesteading the same, and ever since said
14 — day of September, 1878, has continued to reside upon said land and to cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $300, and that on the 22d day of October, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said Joseph A. Cox, in good faith, made application for filing a homestead, covering said south half of the southeast quarter and the northwest quarter of the southeast

quarter, and the southeast quarter of the southwest quarter of section thirty-three (33), township fourteen (14) south, range eight (8) west, of the Willamette meridian at the Roseburg land office in the State and district of Oregon.

XVI.

And your orator would further show unto your honors that on the 15th day of October, 1889, John W. Carey, a duly qualified homestead entryman under the laws of the United States of America, settled upon the northeast quarter of the northeast quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, of the Willamette meridian, with the intention of homesteading the same, and ever since said 15th day of October, 1889, has continued to reside upon said land and to cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $500, and
15 that on the 27th day of October, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said John W. Carey, in good faith, made application for filing a homestead, covering said northeast quarter of the *southeast* quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, af the Willamette meridian, at the Roseburg land office in the State and district of Oregon.

XVII.

And your orator would further show unto your honors that on the — day of July, 1883, Uriah W. Wren, a duly qualified homestead entryman under the laws of the United States of America, settled upon the west half of the southeast quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section twenty-five (25), township fourteen (14) south, range eight (8) west, of the Willamette meridian, with the intention of homesteading the same, and ever since said — day of July, 1883, has continued to reside upon said land and to cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $2,000, and that on the 22d day of October, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg,
16 Oregon, the said Uriah W. Wren, in good faith, made application for filing a homestead, covering said west half of the southeast quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section twenty-five (25), township fourteen (14) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office in the State and district of Oregon.

XVIII.

And your orator would further show unto your honors that on the — day of ——, 1878, Abram M. Peek, a duly qualified homestead entryman under the laws of the United States of America, settled upon the north half of the southeast quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian, with the intention of homesteading the same, and ever since the said — day of ——, 1878, has continued to reside upon said land and to cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $1,700, and that on the 22d day of October, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said *Uriah W. Wren*, in good faith, made application for filing a homestead, covering said north half of the southeast quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office in the State and district of Oregon.

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XIX.

And your orator would further show unto your honors that on the 10th day of August, 1890, Alfred R. Young, a duly qualified pre-emption entryman under the laws of the United States of America, settled upon the outheast quarter of the northeast quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian, with the intention of pre-empting the same, and ever since said 10th day of August, 1890, has continued to reside upon said land and to cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $1,200, and that on the 9th day of December, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office of Roseburg, Oregon, the said Alfred R. Young, in good faith, made application for filing a pre-emption, covering said southeast quarter of the northeast quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office, in the State and district of Oregon.

XX.

And your orator would further show unto your honors that on the 26th day of April, 1890, Francis W. Huddleston, a duly qualified homestead entryman under the laws of the United States of America, settled upon the west half of the northeast quarter and the

northwest quarter of the southeast quarter of section nine-
18 teen (19), township fourteen (14) south, range eight (8) west,
of the Willamette meridian, with the intention of homestead-
ing the same, and ever since said 26th day of April, 1890, has continued to reside upon said land and to cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $800, and that on the 12th day of November, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said Francis W. Huddleston, in good faith, made application for filing a homestead, covering said west half of the northeast quarter, and the northwest quarter of the southeast quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office in the State and district of Oregon.

XXI.

And your orator would further show unto your honors that on the — day of July, 1885, Charles E. Banton, a duly qualified homestead entryman under the laws of the United States of America, settled upon the northeast quarter of the northwest quarter, and the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-five (25), township fourteen (14) south, range eight west, of the Willamette meridian, with the intention of homesteading the same, and ever since said — day of July, 1885, has
continued to reside upon said land and to cultivate the same,
19 and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $1,500, and that on the 22d day of October, 1892, and within ninety days from the date of the filing of the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said Charles E. Banton, in good faith, made application for filing a homestead, covering said northeast quarter of the northwest quarter, and the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-five (25), township fourteen (14) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office, in the State and district of Oregon.

XXII.

And your orator would further show unto your honors that on the — day of October, 1878, George C. Peek, a duly qualified homestead entryman under the laws of the United States of America, settled upon the south half of the southwest quarter and the northwest quarter of the southwest quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian, with the intention of homesteading the same, and ever since said — day of October, 1878, has continued to reside upon said land and to

cultivate the same, and has made improvements thereon in the way of dwellings, barns, outhouses, fencing, clearing and planting of fruit trees thereon, which said improvements aggregate in round numbers the sum of $1,500, and that on the 22d day of October, 1892, and within ninety days from the date of the filing of
20 the township plat of the survey of said lands in the district land office at Roseburg, Oregon, the said George C. Peek, in good faith, made application for filing a homestead, covering said south half of the southwest quarter, and the northwest quarter of the southwest quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian, at the Roseburg land office in the State and district of Oregon.

XXIII.

And your orator would further show unto your honors that said indemnity lists Nos. 27, 28 and 29 of selections made by the Oregon & California Railroad Company were duly presented to the General Land Office at the Capital in Washington, and thereafter to the Secretary of the Interior, and that at the time of said presentation of said lists at said General Land Office and to the said Secretary of the Interior, no knowledge of the adverse claims of said Charles E. Banton, Alfred R. Young, Francis W. Huddleston, Uriah W. Wren, Abram M. Peek, John W. Carey, Joseph Cox, Charles Seeley, Charles Heller, J. R. Peters, Baxter W. Jenkins, John Sapp and George C. Peck were known to said General Land Office or to said Secretary of the Interior, and thereupon and without any knowledge of said adverse claims on the part of said parties above mentioned, the said General Land Office and the said Secretary of the Interior in due form approved of said indemnity lists of selections, and thereafter, and on February 20, 1892, a patent was duly issued to the Oregon & California Railroad Company for the following-described lands, to wit:

21 The north half of the northwest quarter of section seven (7), township fifteen (15) south, range eight (8) west, of the Willamette meridian; the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section nine (9), township fifteen (15) south, range eight (8) west, of the Willamette meridian; the south half of the southeast quarter and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section twenty-seven (27), township twenty-seven (27) south, range eleven (11) west, of the Willamette meridian; the north half of the northwest quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the northwest quarter of the northeast quarter of section seven (7), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the south half of the southeast quarter and the northwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section thirty-three (33), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the northeast quarter of the southeast quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, of

the Willamette meridian; west half of the southeast quarter and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section twenty-five (25), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the north half of the southeast quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section five (5), township fifteen (15) south, range
22 eight (8) west, of the Willamette meridian; the southeast quarter of the northeast quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian; the west half of the northeast quarter and the northwest quarter of the southeast quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the northeast quarter of the northwest quarter, and the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-five (25), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the south half of the southwest quarter and the northwest quarter of the southwest quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian.

But your orator avers that the ministerial officers of your orator acted erroneously and contrary to law in issuing a patent to the defendant, The Oregon & California Railroad Company, for the lands described herein under the facts as stated herein, and so your orator avers that said patents are void and should be so declared, but that said defendant company still claims title to said lands under said patent and withholds said lands from your orator.

XXIV.

And your orator further shows that the Congress of the United States by an act entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned land and for other purposes," approved March 3, 1887, directed and authorized the Secretary
23 of the Interior to adjust all grants theretofore unadjusted, and if it should appear that any lands had been erroneously patented to any railroad company to make demand for relinquishment or reconveyance, and if such company should refuse to reconvey within ninety days then it should be the duty of the Attorney General to commence and prosecute in the proper court the necessary proceedings to cancel such patents and restore title to the United States. And your orator avers that on the 27th day of October, 1893, the total grant of lands in the State of Oregon, under said act of July 25, 1866, to said Oregon Central Railroad Company, to the rights of which said Oregon & California Company has succeeded as aforesaid, was unadjusted and the Secretary of the Interior regarding the said patents to the above-described lands as erroneously issued, directed the Commissioner of the General Land Office to request reconveyance as provided by statute and in accordance with such directions the Commissioner of the General Land Office did on said 27th day of October, 1893, make demand

of the said railroad company by a letter addressed to C. P. Huntington, president of the Southern Pacific Company, owning and controlling the land grant for said Osegon & California Railroad Company, for the reconveyance of said above-described lands, and your orator avers that no response has been made to said demand for reconveyance as requested, and that said defendant company has refused and still refuses to so reconvey said land.

Forasmuch, therefore, as your orator is without adequate remedy in a court of law and to the end that the said defendant com-
24 pany may, if it can, show why your orator should not have the relief herein prayed, and that matters herein may be determined according to equity and good conscience, your orator brings this suit, and prays that the patent purporting to convey title to said above-described lands may be set aside, canceled and decreed null and void; and your orator prays all other and proper relief in the premises.

And may it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this court, directed to the defendant, The Oregon & California Railroad Company, commanding it, on a certain day and under a certain penalty therein to be specified, personally to be and appear in this court, and then and there to answer, but not under oath (an answer under oath being hereby expressly waived herein), and to abide such order and decree as to your honors may seem proper.

JUDSON HARMON,
Attorney General of the United States.
DANIEL R. MURPHY,
United States Attorney.
CHAS. J. SCHNABEL,
Assistant United States Attorney.

Filed January 31, 1896.

J. A. SLADEN, *Clerk.*

25 And afterward, to wit, on the 31st day of January, 1896, there was issued out of said court a *subpœna ad respondendum*, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.
In Equity.

THE UNITED STATES, Complainant,
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Subpœna ad Respondendum.

The President of the United States of America to The Oregon and California Railroad Company, Greeting:

You and each of you are hereby commanded that you be and appear in said circuit court of the United States, at the court-room

thereof, in the city of Portland, in said district, on the first Monday of March next, which will be the 2d day of March, A. D. 1896, to answer the exigency of a bill of complaint exhibited and
26 filed against you in our said court, wherein The United States is complainant and you are defendant, and further to do and receive what our said circuit court shall consider in this behalf, and this you are in nowise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said district, or your deputy, to make due service of this our writ of subpœna, and to have then and there the same.

Hereof fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 31st day of January, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States, the one hundred and —.

[Seal of the U. S. Circuit Court for the District of Oregon.]

J. A. SLADEN, *Clerk*,
By G. H. MARSH,
Deputy Clerk.

Memorandum Pursuant to Equity Rule No. 12 *of the Supreme Court of the United States.*

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso.*

27 *Return to Subpœna ad Respondendum.*

UNITED STATES OF AMERICA, *District of Oregon,* } ss:

I hereby certify that I served the annexed *subpœna ad respondendum*, in Portland, Multnomah county, in said district on the 1st day of February, 1896, on the therein-named defendant, The Oregon and California Railroad Company, by delivering a copy thereof, prepared and certified to by me as United States marshal, together with a copy of the complaint, in the therein-entitled suit certified to by Daniel R. Murphy, United States district attorney, to R. Koehler, the general manager of the Southern Pacific Railroad Company, said company being the successor of the said Oregon and California Railroad Company, the defendant herein named.

H. C. GRADY,
United States Marshal,
By GEO. HUMPHREY, *Deputy.*

(Endorsed:) No. 2,272. In the circuit court of the United States, for the district of Oregon. In equity. The United States *vs.* The Oregon and California Railroad Company. *Subpœna ad respondendum.* Returned and filed February 1, 1896. J. A. Sladen, clerk.

28 And afterward, to wit, on the 2d day of March, 1896, there was duly filed in said court a præcipe for appearance of defendant, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY. } No. 2272.

Præcipe for Appearance of Defendant.

To the clerk of the above-entitled court:

You will please enter our appearance as solicitors in the above-entitled cause for the defendant, The Oregon and California Railroad Company.

BRONAUGH, McARTHUR, FENTON & BRONAUGH.
E. C. BRONAUGH.
L. L. McARTHUR.
W. D. FENTON.
E. C. BRONAUGH, JR.

Filed and entered March 2, 1896.

J. A. SLADEN, *Clerk.*

29 And afterward, to wit, on the 14th day of March, 1896, there was duly filed in said court a stipulation extending time to plead in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES, Complainant,
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Stipulation Extending Time to Plead.

It is hereby stipulated by and between the complainant and the defendant in the above-entitled cause, by their respective solicitors, that the defendant may have sixty days' time on and after April 6th, 1896, in which to plead, answer or demur to the bill of complaint in the above-entitled cause.

DANIEL R. MURPHY,
United States Attorney and Solicitor for Complainant.
BRONAUGH, McARTHUR, FENTON & BRONAUGH, *Solicitors for Defendant.*

Filed March 14, 1896.

J. A. SLADEN, *Clerk.*

30 And afterward, to wit, on Saturday, the 14th day of March, 1896, the same being the 135th judicial day of the regular October term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* THE OREGON & CALIFORNIA RAILROAD COMPANY.	No. 2272. March 14, 1896.

Order Allowing Time to Plead.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendant, and it appearing to the court that a stipulation of the parties hereto has heretofore been filed in this cause agreeing hereto, it is ordered that said defendant be, and it is hereby, allowed sixty days' time on and after Monday, April 6, 1896, in which to plead, answer, or demur to the bill of complaint herein.

31 And afterward, to wit, on Monday, the 6th day of April, 1896, the same being the 154th judicial day of the regular October, term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* THE OREGON & CALIFORNIA RAILROAD COMPANY.	No. 2272. April 6, 1896.

Order Extending Time to File Answer.

Now, at this day, on motion of Mr. Daniel R. Murphy, United States attorney, it is ordered that the defendant in the above-entitled cause be, and it is hereby, allowed sixty days from this date in which to file its answer herein.

32 And afterward, to wit, on the 20th day of May, 1896, there was duly filed in said court, a stipulation extending time to plead, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES, Complainant,
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Stipulation Extending Time to Plead.

It is hereby stipulated by and between the complainant and defendant in the above-entitled suit that the time to plead may be enlarged and extended to and including July 6th, 1896.

DANIEL R. MURPHY,
United States Attorney and Solicitor for Complainant.
BRONAUGH, McARTHUR, FENTON & BRONAUGH, *Solicitors for Defendant.*

Filed May 20, 1896.

J. A. SLADEN, *Clerk.*

33 And afterward, to wit, on Wednesday, the 20th day of May, 1896, the same being the 33d judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILROAD Co. } No. 2272. May 20, 1896.

Order Extending Time to Plead.

Now, at this day, upon stipulation of the parties filed herein, and on motion of Mr. W. D. Fenton, of counsel for the defendant, it is ordered that said defendant be, and it is hereby, allowed until Monday, July 6, 1896, in which to plead this cause.

34 And afterward, to wit, on Tuesday, the 23d day of June, 1896, the same being the 62d judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILROAD Company. } No. 2272. June 23, 1896.

Order Extending Time to Plead.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendant, it is ordered that the time heretofore granted in which the defendant may plead in this cause be, and the same is hereby, extended to Monday, August 3, 1896.

35 And afterward, to wit, on the 23d day of July, 1896, there was duly filed in said court a stipulation extending time to plead, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Stipulation Extending Time to Plead.

It is hereby stipulated by and between plaintiff and the defendant in the above-entitled suit that the defendant may have thirty days from this date within which to move or plead to the bill of complaint herein.

Dated at Portland, Oregon, this 23d July, 1896.

CHAS. J. SCHNABEL,
Of Attorneys for United States.
L. L. McARTHUR,
Of Attorneys for Defendant.

Filed July 23, 1896.

J. A. SLADEN, *Clerk.*

36 And afterward, to wit, on the 22d day of August, 1896, there was duly filed in said court an answer, in words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, for the District of Oregon. In Equity.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Answer.

The answer of the defendant, Oregon and California Railroad Company, to the complainant's bill of complaint herein.

The defendant, Oregon and California Railroad Company, now and at all times saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, or imperfections in the said bill of complaint, for answer thereto, or to so much thereof as the defendant is advised it is material or necessary for it to make answer to, answering:

37 I.

It admits and avers that the Congress of the United States, by an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California, to Portland, in Oregon," approved July 25th, 1866, authorized and empowered such company, organized under the laws of Oregon as the legislature of said State should thereafter designate, to construct a railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly, through the Willamette, Umpqua, and Rogue River valleys to the southern boundary of Oregon, where the same should connect with another railroad which the said act authorized to be constructed in the State of California. That the said act granted to the said Oregon Company, its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and provided that when any of said alternate sections or parts of sections should be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands designated as aforesaid, should be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of the said first-named alternate sections; and

38 provided that as soon as the said company should file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior should

withdraw from sale the public lands therein granted on each side of the said railroad, as far as located and within the limits specified.

And the defendant says that the Oregon Central Railroad Company is, and ever since April 22d, 1867, has been, a corporation, duly organized and existing by and in virtue of the laws of Oregon. That the legislature of the State of Oregon, by its joint resolution entitled "Senate joint resolution No. 16, relating to the railroad land grant from the Central Pacific railroad in California, to Portland, Oregon," adopted October 20th, 1868, duly designated the said Oregon Central Railroad Company as the company entitled to receive the lands granted in Oregon, and the benefits and privileges conferred by the said act of July 25th, 1866; and the defendant admits that the said company became the corporation entitled to all the benefits in Oregon, and subject to all the obligations, of the said act of Congress.

The defendant says that it is, and ever since March 17th, 1870, has been a corporation duly organized and existing by and in virtue of the laws of Oregon; and admits and avers that on or about April 4th, 1870, it became the successor and assign of the said Oregon Central Railroad Company, and entitled to all the privileges, benefits, and grants in Oregon provided by the said act of July 25th, 1866.

39 II.

Further answering the defendant says that on or about ——, 1869, and within the time allowed by the act of Congress, approved April 10th, 1869, entitled "An act to amend an act entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California, to Portland, in Oregon,' approved July twenty-five eighteen hundred and sixty-six," the said Oregon Central Railroad Company duly filed in the Department of the Interior its assent to the said act of Congress of July 25th, 1866.

The said Oregon Central Railroad Company, prior to the month of October, 1869, definitely located and surveyed the first section of the railroad in Oregon provided for by the said act of July 25th, 1866, which section of railroad extended from Portland to a point at or near Jefferson, and comprised not less than sixty continuous miles from the northern terminus thereof; and on October 29th, 1869, the said company filed in the office of the Secretary of the Interior, and the Secretary of the Interior duly accepted and approved, a map of the survey of the said first section of railroad. Prior to the month of March, 1870, the said company definitely located and surveyed the second section of the said railroad, which section of railroad extended from the said point at or near Jefferson, to a point near the southeast corner of section 35, in township 27 south, range 6 west, Willamette meridian, and comprised not less than one hundred and twenty continuous miles of railroad
40 from Jefferson; and on March 26th, 1870, the said company filed in the office of the Secretary of the Interior, and the Secretary of the Interior duly accepted and approved, a map of the survey of the said second section of railroad. On January 31st,

1870, the Commissioner of the General Land Office, by direction of the Secretary of the Interior theretofore made, withdrew all the odd-numbered sections within thirty miles on each side of the railroad shown on the said map of survey filed October 29th, 1869, from sale or location, pre-emption or homestead entry, notice of which withdrawal was received at the local land office for the Oregon City district (within which district the said lands were situated) on February 16th, 1870; and on April 7th, 1870, the Commissioner of the General Land Office, by direction of the Secretary of the Interior made on March 26th, 1870, withdrew all the odd-numbered sections within thirty miles on each side of the railroad shown on the said map of survey filed on March 26th, 1870, from sale or location, pre-emption or homestead entry, notice of which withdrawal was received at the local land office for the Oregon City district on April 28th, 1870, and at the local land office for the Roseburg district (within which two districts the said lands were situated) on April 25th, 1870. All of the lands withdrawn as aforesaid have ever since remained so withdrawn by virtue of the said withdrawals and the provisions of the said act of July 25th, 1866.

The said Oregon Central Railroad Company and this defendant duly comp-eted and equipped the said first section of railroad along the line shown on the map of survey filed October 29th, 1869,
41 and had the same ready for the service contemplated by the act of July 25th, 1866, prior to November 6th, 1870; and three commissioners, duly appointed by the President of the United States for that purpose, examined the same and on or about ——, 1870, duly reported, under oath, to the President of the United States, that the said section of railroad had been completed and equipped in all respects as required by the said act, and that the same was ready for the service contemplated by the said act, which report was, on or about February 28th, 1871, duly accepted and approved by the President of the United States. The said second section of railroad was duly completed and equipped along the line shown on the map filed March 26th, 1870, and made ready for the service contemplated by the act of July 25th, 1866, prior to December 3d, 1872, by the defendant; and three commissioners, duly appointed by the President of the United States for that purpose, examined the same, and on and before December 27th, 1876, duly reported, under oath, to the President of the United States that the said section of railroad had been completed and equipped in all respects as reqired by the said act, and that the same was ready for the service contemplated by the said act, which report was, on and before July 11th, 1878, duly accepted and approved by the President of the United States. Prior to the year 1885 the defendant duly completed and equipped the entire railroad in Oregon contemplated and provided for by the said act of July 25th, 1866, and had the same ready for the service contemplated by the said act; and commissioners, duly appointed by the President of the
42 United States for that purpose, examined the same and duly reported, under oath, to the President of the United States, that the same had been completed and equipped in all respects as

required by the said act, and that the same was ready for the service contemplated by the said act, and such reports were duly accepted and approved by the President of the United States.

The defendant admits and avers that the lands described in subdivision II of the bill of complaint herein are distant more than twenty miles from, but lie within thirty miles of the railroad shown on the said map filed March 26th, 1870, and are distant more than twenty miles from, but lie within thirty miles of, the said second section of railroad completed, equipped and accepted as aforesaid; and that none of the said lands are mineral lands, nor included by any exception to or reservation from the lands in Oregon granted by the said act of July 25th, 1866, and that all of the said lands are within the limits of the withdrawal made on March 26th, 1870.

III.

The defendant admits that on August 15th, 1887, the then Secretary of the Interior, by a departmental order, declared the said withdrawal of March 26th, 1870, revoked as to the lands within the indemnity limits; and that in and by the terms of said revocation order, in so far as he had the power or authority so to do, the Secretary restored the lands described in subdivision II of the bill of complaint to the public domain, and threw them open for the benefit of pre-emption and homestead entries. But the defend-
43 ant denies that the said revocation order restored any of the said lands to the public domain, or threw any of the said lands open to pre-emption or homestead entries; and says that on March 26th, 1870, by force and virtue of section 2 of the said act of July 25th, 1866, all of the lands described in the bill of complaint were reserved from the public domain, for the benefit of the land grant made by the said act, and withdrawn from pre-emption and homestead entries, and have ever since remained so reserved and withdrawn.

IV.

The defendant admits that the Congress of the United States, by the act mentioned in subdivision IV of the bill of complaint, provided as is in the said act set forth; but says that the said act did not in anywise affect its (the defendant's) right, title or interest in or to any of the lands described in subdivision II of the bill of complaint.

V.

The defendant admits that the official plat of survey of township 27 south, range 11 west, was filed in the district land office at Roseburg, Oregon, on August 16th, 1892; and that the official plat of the survey of township 14 south, range 8 west, was filed in the said land office on October 19th, 1892; and that the official plat of survey of township 15 south, range 8 west, was filed in the said land office on October 19th, 1892. And defendant says that each of said townships is within the district of lands subject *of* sale and proceedings in the said land office at Roseburg, Oregon.

44 VI.

Further answering the defendant says that many of the odd-numbered sections on each side of the said railroad within twenty and thirty miles thereof have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of; and on July 25th, 1866, and at all times since, all the odd-numbered sections of public land within thirty miles of said railroad, not granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of were and have been insufficient to make the quantity granted by the said act of July 25th, 1866.

The defendant admits and says that all the lands described in subdivision II of the bill of complaint lying within — 27 south, range 11 west, were duly selected by the defendant in its indemnity list No. 27 of selections; that the said list was in proper form, accompanied by all the fees, costs, and charges required by law, and the lands in it described were thereby duly selected by the defendant under the direction of the Secretary of the Interior, as indemnity lands granted by the said act of July 25th, 1866; and the said list was duly approved by the local land officers at Roseburg, Oregon, on August 16th, 1892, and by the Secretary of the Interior on or about January —, 1893.

The defendant also admits and says that all the lands described in subdivision II of the bill of complaint lying within township 14 south, range 8 west, were duly selected by the defendant in its indemnity list No. 28 of selections; that the said list was in

45 proper form accompanied by all the fees, costs, and charges required by law, and the lands in it described were thereby duly selected by the defendant under the direction of the Secretary of the Interior, as indemnity lands granted by the said act of July 25th, 1866; and the said list was duly approved by the local land officers at Roseburg, Oregon, on October 19th, 1892, and by the Secretary of the Interior on or about January —, 1893.

The defendant also admits and says that all the lands described in subdivision II of the bill of complaint lying within township 15 south, range 8 west, were duly selected by the defendant in its indemnity list list No. 29 of selections; that the said list was in proper form, accompanied by all the fees, costs, and charges required by law, and the lands in it described were thereby duly selected by the defendant under the direction of the Secretary of the Interior, as indemnity lands granted by the said act of July 25th, 1866; and the said list was duly approved by the local land officers at Roseburg, Oregon, on October 19th, 1892, and by the Secretary of the Interior on or about January —, 1893.

VII.

The defendant admits that on October 22d, 1892, one John Sapp made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering the N. ½ of N. W. ¼ of section 7, township 15 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as

to any of the other matters and things set forth in subdivision X of the bill of complaint, and for that reason the defendant denies all such matters and things.

46 VIII.

The defendant admits that on November 3d, 1892, one Baxter W. Jenkins made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering the S. E. ¼ of N. E. ¼, and the N. E. ¼ of S. E. ¼ of section 9, township 15 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XI of the bill of complaint, and for that reason the defendant denies all such matters and things.

IX.

The defendant admits that on October 25th, 1892, one Charles Heller, Jr., duly tendered his filing at the Roseburg land office, in the State and district of Oregon, for a homestead covering the S. ½ of the S. E. ¼, and the N. E. ¼ of S. E. ¼ and S. E. ¼ of N. E. ¼ of section 27, township 27 south, range 11 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XII of the bill of complaint, and for that reason the defendant denies all such matters and things.

X.

The defendant admits that on November 12th, 1892, one Charles S. Seely made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering the N. ½ of N. W. ¼ of section 19, township 14 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge
47 or information as to any of the other matters and things set forth in subdivision XIII of the bill of complaint, and for that reason the defendant denies all such matters and things.

XI.

The defendant admits that on October 22d, 1892, one J. R. Peters made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering the N. W. ¼ of N. E. ¼ of section 7, township 14 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XIV of the bill of complaint, and for that reason the defendant denies all such matters and things.

XII.

The defendant admits that on October 22d, 1892, one Joseph A. Cox made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering the S. ½ of S. E. ¼ and the N. W. ¼ of S. E. ¼, and the S. E. ¼ of S. W. ¼ of section

33 township 14 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XV of the bill of complaint, and for that reason the defendant denies all such matters and things.

XIII.

The defendant admits that on October 27th, 1892, one John W. Carey made application at the Roseburg land office, in the
48 State and district of Oregon, for filing a homestead covering the N. E. ¼ of S. E. ¼ of section 19, township 14 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XVI of the bill of complaint, and for that reason the defendant denies all such matters and things.

XIV.

The defendant admits that on October 22d, 1892, one Uriah W. Wren made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering the W. ½ of S. E. ¼ and the N. E. ¼ of S. W. ¼, and the S. E. ¼ of N. W. ¼ of section 25, township 14 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XVII of the bill of complaint, and for that reason the defendant denies all such matters and things.

XV.

The defendant admits that on October 22d, 1892, one Abram M. Peek made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering the N. ½ of S. E. ¼ and N. E. ¼ of S. W. ¼, and the S. E. ¼ of N. W. ¼ of section 5, township 15 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XVIII of the bill of complaint, and for that reason the defendant denies all such matters and things.

49 XVI.

The defendant admits that on December 9th, 1892, one Alfred R. Young made application at the Roseburg land office, in the State and district of Oregon, for filing a pre-emption covering the S. E. ¼ of N. E. ¼ of section 5, township 15 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XIX of the bill of complaint, and for that reason the defendant denies all such matters and things.

XVII.

The defendant admits that on November 12th, 1892, one Francis W. Huddleston made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering the W. ½ of N. E. ¼ and N. W. ¼ of S. E. ¼ of section 19, township 14 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XX of the bill of complaint, and for that reason the defendant denies all such matters and things.

XVIII.

The defendant admits that on October 22d, 1892, one Charles E. Banton made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering the N. E. ¼ of N. W. ¼ and the W. ½ of N. W. ¼ and the N. W. ¼ of S. W. ¼ of section 25, township 14 south, range 8 west, Willamette meridian.

But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XXI of the bill of complaint, and for that reason the defendant denies all such matters and things.

50

XIX.

The defendant admits that on October 22d, 1892, one George C. Peek made application at the Roseburg land office, in the State and district of Oregon, for filing a homestead covering S. ½ of S. W. ¼ and the N. W. ¼ of S. W. ¼ of section 5, township 15 south, range 8 west, Willamette meridian. But the defendant says that it has no knowledge or information as to any of the other matters and things set forth in subdivision XXII of the bill of complaint, and for that reason the defendant denies all such matters and things.

XX.

The defendant admits and avers that the said indemnity lists Nos. 27, 28, and 29 of selections made by it were duly presented to the General Land Office at the Capital in Washington, and thereafter to the Secretary of the Interior; but the defendant is not informed, and has no knowledge about such matters, and on that ground denies that at the time of the presentation of said lists at the General Land Office and to the Secretary of the Interior, no knowledge of the adverse claims set forth in subdivision XXIII of the bill of complaint was known to the General Land Office or to the Secretary of the Interior. The defendant admits and avers that the General Land Office and the Secretary of the Interior did, in due form, approve the said indemnity lists of selections when presented as aforesaid, and that thereafter, on or about February 20th, 1893, a patent was duly issued by the United States to the defendant for the lands described in subdivision XX of the bill of complaint; but the defendant is not informed, and has no knowledge about the matter, and so denies that the General Land Office or the Secretary of the

51

Interior approved the said indemnity lists of selections when presented, without knowledge of the said adverse claims, or that the said patent issued without knowledge by the General Land Office and the Secretary of the Interior of the said adverse claims.

The defendant denies that the ministerial officers of the United States, or any thereof, acted erroneously or contrary to law in issuing a patent to it (the defendant) for the lands described in the bill of complaint herein, or any thereof; or that the said patent is void, or should be so declared. The defendant admits that it claims title to all of said lands under the said patent; and says that the said patent was duly and properly issued, in pursuance and with full authority of law, and that all the officers of the United States acted properly, and none of them erroneously, in issuing the patent, and that the said patent is in all respects lawful and valid.

XXI.

The defendant admits that the Congress of the United States, by its act approved March 3d, 1887, mentioned in subdivision XXIV of the bill of complaint, provided as is in the said act set forth; and that on October 27th, 1893, the total grant of the lands in the State of Oregon made by the said act of July 25th, 1866, was unadjusted.

The defendant admits that C. P. Huntington is the presi-
52 dent of the Southern Pacific Company, but denies that the Southern Pacific Company or C. P. Huntington owns or controls the — or any land grant for this defendant. The defendant says that no demand was ever made upon it for reconveyance of any land described in the bill of complaint; and denies that it ever refused, but admits it refuses, to reconvey the same, or any thereof.

The defendant says that it has no information or knowledge as to any of the other matters and things set forth in subdivision XXIV of the bill of complaint, and on that ground it denies all of such matters and things.

And the defendant denies all and all manner of matter, cause, or thing in the complainant's said bill contained, material, or necessary for it to make answer to, and not herein well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of the defendant. All of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court may direct; and the defendant prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

WM. D. FENTON,
WM. SINGER, JR.,
Attorneys for Defendant.

WM. F. HERRIN,
Counsel for the Defendant.

53 DISTRICT OF OREGON, } ss:
Multnomah County. }

I, Richard Koehler, being first duly sworn, on my oath do depose and say that I am second vice-president of the defendant above

named; that I have read the foregoing answer and know the contents thereof; that so much of the allegations of said answer as are not stated upon information and belief are true; that as to the matters and things therein stated upon information and belief I verily believe them to be true.

R. KOEHLER.

Subscribed and sworn to before me this 21st day of August, A. D. 1896.

[SEAL.] W. D. FENTON,
Notary Public for Oregon.

DISTRICT OF OREGON, } ss:
Multnomah County, }

Due service of the within answer is hereby admitted by receipt of a certified copy thereof, certified to by Wm. D. Fenton, one of solicitors for defendant.

Dated August 21st, 1896.

DANIEL R. MURPHY,
United States Attorney.

Filed August 22, 1896.

J. A. SLADEN, *Clerk.*

54 And afterward, to wit, on Friday, the 11th day of December, 1896, the same being the 59th judicial day of the regular October term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES vs. THE OREGON & CALIFORNIA RAILROAD COMPANY.	No. 2272. Dec. 11, 1896.

Order Allowing Time to File Reply.

Now, at this day, on motion of Mr. Charles J. Schnabel, assistant United States attorney, it is ordered that said plaintiff be, and it is her-by, allowed to file its reply herein.

55 And afterward, to wit, on the 12th day of December, 1896, there was duly filed in said court a replication, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.
In Equity.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Replication.

The replication of the above-named complainant to the answer of the above-named defendant herein.

The replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto saieth that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendant, and
56 that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material, or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly, as in and by its said bill it has already prayed.

DANIEL R. MURPHY,
United States Attorney and Solicitor for Complainant.

STATE OF OREGON, } ss:
County of Multnomah, }

Due service of the within reply and the receipt of a copy thereof duly prepared and certified to by Daniel R. Murphy, attorney for United States, is hereby admitted at the city of Portland, in said county and State, this 12th day of December, 1896.

WM. D. FENTON,
Attorney for Defendant.

Filed December 12, 1896.

J. A. SLADEN, *Clerk.*

57 And afterward, to wit, on the 17th day of December, 1896, there was duly filed in said court a motion for appointment of examiner, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES, Complainant,
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Motion for Appointment of Examiner.

To W. D. Fenton, solicitor for defendant:

Please take notice that at a stated term of this court to be held on the 23d day of December, 1896, at Portland, the plaintiff in this cause will move, at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order that an examiner be appointed herein, under the 67th rule as amended, to take the depositions of witnesses in behalf of said plaintiff.

DANIEL R. MURPHY,
United States Attorney and Solicitor for Plaintiff.

58 STATE OF OREGON, } ss:
County of Multnomah, }

Due service of the within motion and the receipt of a copy thereof duly prepared and certified to by D. R. Murphy, attorney for United States, is hereby admitted at the city of Portland, in said county and State, this 17th day of December, 1896.

WM. D. FENTON,
Of Attorneys for Defendant.

Filed December 17, 1896.

J. A. SLADEN, *Clerk.*

And afterward, to wit, on Thursday, the 24th day of December, 1896, the same being the 70th judicial day of the regular October term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILROAD Company. } No. 2272. December 24, 1896.

Order Referring Cause to Examiner.

Now, at this day, comes the plaintiff by Mr. Daniel R.
59 Murphy, United States attorney, and the defendant by Mr. W. D. Fenton, of counsel, and on motion of said defendant, it is ordered that this cause be, and it is hereby, referred to Mr.

George A. Brodie, examiner of this court, to take and report the testimony herein.

And afterward, to wit, on Thursday, the 9th day of December, 1897, the same being the 58th judicial day of the regular October term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY. } No. 2272. December 9, 1897.

Order Extending Time to Take Testimony.

Now, at this day, comes the plaintiff by Mr. Charles J. Schnabel, assistant United States attorney, and thereupon, on motion of said plaintiff, and upon stipulation of the parties filed herein, it is ordered that the defendant herein be, and it is hereby, allowed sixty days, after making and filing of a proposed stipulation as to facts in another cause between the same parties, in this court numbered 2,405, in which to take its testimony herein.

60 And afterward, to wit, on the 12th day of September, 1898, there was duly filed in said court a præcipe for appearance of homestead and pre-emption settlers, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES, Plaintiff,
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Præcipe for Appearance of Settlers.

To the clerk of the above-entitled court:

By direction of the settlers of the lands involved in the above-entitled suit, and by leave first had and obtained, you will please enter our appearance in behalf of said settlers, whose names are set out in the bill of complaint herein filed, to wit: George C. Peek, Abram M. Peek, John Sapp, Charles S. Seeley, Baxter W. Jenkins, Joseph A. Cox, Charles Heller, Jr., J. R. Peters, John W. Carey, Uriah W. Wrenn Alfred R. Young, Francis W. Huddleston, and Charles E. Banton.

THAYER, ST. RAYNER & SCHNABEL.
W. W. THAYER,
HENRY ST. RAYNER, AND
CHAS. J. SCHNABEL.

Filed September 12, 1898.

J. A. SLADEN, *Clerk.*

61 And afterward, to wit, on the 31st day of October, 1898 there was duly filed in said court a præcipe for appearance of Charles Heller, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES, Plaintiff,
vs.
THE OREGON & CALIFORNIA R. R. CO., CHARLES HELLER, and Others.

Præcipe for Appearance of Charles Heller.

Come now Pipes & Tifft, and enter their appearance as attorneys for the defendant Charles Heller, in the above-entitled cause.

PIPES & TIFFT,
Attorneys for Defendant Charles Heller.

Filed October 31, 1898.

J. A. SLADEN, *Clerk.*

62 And afterward, to wit, on the 31st day of October, 1898, there was duly filed in said court a stipulation of facts in words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, for the District of Oregon. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Stipulation of Facts.

It is stipulated and agreed as follows:

1st item. The act of Congress approved July 25th, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," as printed in volume 14 of the United States Statutes at Large, on pages 239 and following, is admitted in evidence.

2d item. The Oregon Central Railroad Company is a corporation duly incorporated and organized on April 22d, 1867, by and in virtue of the laws of the State of Oregon.

63 3d item. That the legislature of the State of Oregon, by its joint resolution adopted October 20th, 1868, duly designated the said Oregon Central Railroad Company as the company entitled to receive the lands granted in Oregon, and the benefits and privileges conferred, by the act of Congress referred to in the "1st item" hereof; and prior to the year 1869 the said company duly became entitled to all the benefits, privileges, and grants in the State of Oregon, mentioned in or offered by the said act of Congress.

4th item. The act of Congress approved June 25th, 1868, entitled "An act to amend an act entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon,'" as printed in volume 15 of the United States Statutes at Large, on page 80, is admitted in evidence.

5th item. The act of Congress approved April 10th, 1869, entitled "An act to amend an act entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon,' approved July twenty-five, eighteen hundred and sixty-six," as printed in volume 16 of the United States Statutes at Large, on page 47, is admitted in evidence.

6th item. That on or about July 1st, 1869, the said Oregon Central Railroad Company duly filed in the Department of the Interior its assent to the act of Congress referred to in the "1st item" hereof.

7th item. Prior to the month of October, 1869, the said
64 Oregon Central Railroad Company definitely fixed on the ground and surveyed the first section of the railroad in Oregon contemplated and provided for by the act of Congress referred to in the "1st item" hereof, which section of railroad extended from Portland to Jefferson, and comprised not less than sixty continuous miles of railroad from the northern terminus thereof; and on October 29, 1869, the said company filed in the office of the Secretary of the Interior, and the Secretary of the Interior on January 29th, 1870, duly accepted and approved a map of the survey and definite location of the said first section of railroad.

8th item. During the year 1869 and the months of January and February of the year 1870 the said Oregon Central Railroad Company definitely fixed on the ground and surveyed the second section of the railroad contemplated and provided for by the act of Congress referred to in the "1st item" hereof, which section of railroad extended from Jefferson to a point near the southeast corner of section 35, in township 27 south, range 6 west, Willamette meridian, at or near Roseburg, and comprised not less than one hundred and twenty-four continuous miles of railroad from Jefferson; and on March 26th, 1870, the said company filed in the office of the Secretary of the Interior, and the Secretary of the Interior on March 29th, 1870, duly accepted and approved, a map of the survey and definite location of the said second section of railroad.

9th item. On April 7th, 1870, the Commissioner of the General Land Office, under direction of the Secretary of the Interior dated March 29th, 1870, withdrew all the odd-numbered sections of
65 land lying within thirty miles on each side of the railroad shown on the map of survey and definite location set forth in the "8th item" hereof from sale or location, pre-emption or homestead entry; and such withdrawal has remained in force, continuously, ever since, excepting in so far as, if at all, it was affected by the order of the Secretary of the Interior made on August 15th, 1887, set forth in the "11th item" hereof.

10th item. That portion of the lands withdrawn on April 7th, 1870, as set forth in the "9th item" hereof, which lie south of township 13 south, were at that date, and have ever since been, situated within the United States district of lands subject of sale and proceedings in the United States local land office at Roseburg, in the State of Oregon; and notice of the said withdrawal was duly received at the local land office at Roseburg on April 25th, 1870.

11th item. On August 15th, 1887, the Secretary of the Interior made an order declaring the withdrawal set forth in the "9th item" hereof revoked as to the odd-numbered sections lying within the indemnity limits of the grant made by the act of Congress referred to in the "1st item" hereof, and declaring the odd-numbered sections lying within the entire indemnity limits of said grant restored to the public domain, subject to pre-emption and homestead entry as well as to the provisions of the land grant made by the last-mentioned act of Congress.

12th item. The defendant, The Oregon & California Railroad Company is, and has been continuously since March 7th, 1870, a corporation, duly organized and existing by and in virtue of the laws of the State of Oregon.

13th item. On or about March 29th, 1870, the defendant,
66 The Oregon & California Railroad Company, duly became the successor and assignee of the said Oregon Central Railroad Company, and at the same time became the owner of and entitled to all the benefits, privileges, and grants in the State of Oregon mentioned in, offered or conferred by the act of Congress referred to in the "1st item" hereof; and the defendant company has ever since so remained.

14th item. During the years 1868 and 1869, and prior to December 25th, 1869, the said Oregon Central Railroad Company constructed and fully equipped the first twenty miles of the railroad contemplated by and provided for in the act of Congress referred to in the "1st item" hereof, commencing at Portland and extending along the line shown upon the map mentioned in the "7th item" hereof.

15th item. During the years 1869 and 1870, and prior to September 1st, 1870, the said Oregon Central Railroad Company and this defendant constructed and fully equipped the second twenty miles of the railroad contemplated by and provided for in the act of Congress referred to in the "1st item" hereof, commencing at the end of the first constructed twenty miles of railroad mentioned in the "14th item" hereof, and extending along the line shown upon the map mentioned in the "7th item" hereof, to a point distant forty miles from the commencement of the said railroad at Portland; a portion of the said second twenty miles of railroad having been so constructed and equipped by the said Oregon Central Railroad Company prior to March 29th, 1870, and the remainder thereof
67 having been so constructed and equipped by the defendant company between March 29th, 1870, and September 1st, 1870.

16th item. That the whole line of railroad contemplated and provided for by the act of Congress referred to in the "1st item"

hereof, commencing at the end of the second constructed twenty miles of railroad mentioned in the "15th item" hereof, and extending along the line shown upon the maps mentioned in the "7th item" and "8th item" hereof, was constructed by the defendant company during the years 1870, 1871 and 1872; and prior to December 4th, 1872, the said whole line of railroad from Portland to Roseburg was, and continuously since has been, fully operated for all the purposes contemplated by and provided for in the said act of Congress.

17th item. Commissioners were duly appointed by the President of the United States to examine the said railroad as constructed from Portland to Roseburg; and such commissioners did duly examine all of said railroad, and thereafter duly reported to the President of the United States, under oath, that all of the said railroad had been completed and equipped in all respects as required by the act of Congress referred to in the "1st item" hereof, and that the same was ready for the service contemplated by the said act; and such reports were duly accepted and approved by the President of the United States. That the said commissioners' reports were so made, accepted and approved on the following dates: The first twenty miles, commencing at Portland, report made on December 31st, 1869, accepted and approved on January 29th, 1870; the second twenty miles, report made on October 5th, 1870, ac-
68 cepted and approved on February 28th, 1871; the third and fourth twenty miles, report made on December 10th, 1870, accepted and approved on February 28th, 1871; the fifth twenty miles, report made on August 11th, 1871, accepted and approved on March 11th, 1872; the sixth twenty miles, report made on January 13th, 1872, accepted and approved on March 11th, 1872; the seventh, eighth, and ninth sections, including the last seventy-eight miles of the said railroad from Portland to Roseburg, report made on July 10th, 1878, accepted and approved on July 11th, 1878.

18th item. The remaining part of the railroad in Oregon contemplated and provided for by the act of Congress referred to in the "1st item" hereof, extending from Roseburg to the southern boundary of Oregon, was actually constructed, fully equipped, and made ready by the defendant company for the service contemplated by the said act, in several sections, during the years 1878 to 1889, inclusive, and all prior to the year 1890; and at various times prior to the last-mentioned date, commissioners, duly appointed by the President of the United States, examined the same as the several sections thereof were constructed, and duly reported under oath to the President of the United States that the same had been completed and equipped in all respects as required by the said act of Congress, and that the same was ready for the service contemplated by the said act; and at various times prior to the last-mentioned date the President of the United States duly accepted and approved the said reports.

19th item. All of the lands described in paragraph II of
69 the complainant's bill of complaint are distant more than twenty miles from, but lie within thirty miles on one side of,

the railroad extending from Jefferson to Roseburg, shown on the map filed on March 26th, 1870, and approved by the Secretary of the Interior on March 29th, 1870, referred to in the "18th item" hereof; and the said lands are distant more than twenty miles from, but lie within thirty miles on one side of, that portion of the railroad of the defendant company as constructed and equipped, which extends from Jefferson to Roseburg; and all of the said lands were included and embraced by the withdrawal set forth in the "9th item" hereof.

20th item. No part or portion of the lands described in paragraph II of the complainant's bill of complaint is mineral land, nor included by any exception or reservation from the indemnity land grant in Oregon made by the act of Congress referred to in the "1st item" hereof, except in so far as, if at all, they were excepted or reserved therefrom by reason of the several settlements, performances and proceedings hereinafter set forth.

21st item. The official plat of the survey of township 27 south, range 11 west, Willamette meridian, was filed in the United States land office at Roseburg, Oregon, on August 16th, 1892; and the official plats of the survey of townships 14 south and 15 south, range 8 west, same meridian, were filed in the said land office on October 19th, 1892.

22d item. On August 16th, 1892, all the lands described in paragraph II of the complainant's bill of complaint lying within the said township 27 south, range 11 west, were free and clear for selection by the defendant company as part and parcel of the indemnity lands granted by the act of Congress referred to in the "1st item" hereof, except in so far as, if at all, they were excepted or reserved therefrom by reason of the several settlements, performances and proceedings hereinafter set forth; and on October 19th, 1892, all the lands in paragraph II of the complainant's bill of complaint lying within the said townships 14 south and 15 south, range 8 west, were free and clear for selection by the defendant company as part and parcel of the indemnity lands granted by the said act of Congress, except in so far as, if at all, they were excepted or reserved therefrom by reason of the several settlements, performances, and proceedings hereinafter set forth.

23d item. On November 7th, 1879, the Secretary of the Interior approved and issued a general circular of instructions relating to the adjustment of railroad land grants, prescribing the form and procedure for the selection by railroad companies of lands within the primary and indemnity limits of land grants made by Congress to such companies; which circular has, ever since its date, remained in force and operation as to the following, amongst other, directions therein made by the Secretary of the Interior, relating to the lists required to be filed by railroad companies in selecting lands within the primary and indemnity limits of their land grants from Congress, to wit: "The lists must be carefully and critically examined by the register and receiver, and their accuracy tested by the plats and records of their office. When so examined and tested and found

correct in all respects, they will become final locations, and
71 you will, on the payment of the requisite fees to the receiver, so certify at the foot of each list, according to form B."

24th item. On August 16th, 1892, the defendant company filed with the register and receiver of the United States land office at Roseburg, its list No. 27, selecting the lands described in paragraph II of the complainant's bill of complaint lying in township 27 south, range 11 west, as indemnity lands granted by the act of Congress referred to in the "1st item" hereof, in lieu of lands of equal area parts of odd-numbered sections lying within the primary limits of the land grant made by the act of Congress and otherwise disposed of by the United States prior to the passage of the said act; which list was in proper form accompanied by the fees, costs and charges required by law, and in all respects complied with and conformed to the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office; and on the same day (August 16th, 1892) the said register and receiver carefully examined the said list, and tested its accuracy by the plats and records of their office, and found the same correct in all respects, and upon payment of the requisite fees that day made to the receiver, the register and receiver on that day approved the said list, and duly certified the said list as required by law, the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office. At the time the said list was filed and approved the defend-
72 ant company had not, nor has it since, selected or received any lands in lieu of the lands described in the same list as the basis of the selection by it made, other than the lands so selected by the said list.

25th item. On October 19th, 1892, the defendant company filed with the register and receiver of the United States Land Office at Roseburg its list No. 28 selecting the lands described in paragraph II of the complainant's bill of complaint lying in township 14 south, range 8 west, as indemnity lands granted by the act of Congress referred to in the "1st item" hereof, in lieu of lands of equal area, parts of odd-numbered sections lying within the primary limits of the land grant made by the said act of Congress and otherwise disposed of by the United States prior to the passage of the said act; which list was in proper form, accompanied by the fees, costs and charges required by law, and in all respects complied with and conformed to the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office; and on the same day (October 19th, 1892) the said register and receiver carefully examined the said list, and tested its accuracy by the plats and records of their office, and found the same correct in all respects, and upon payment of the requisite fees that day made to the receiver, the register and receiver on that day approved the said list, and duly certified the same as required by law, the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office. At the time the said list was filed and approved the defend-

ant company had not, nor has it since, selected or received any lands in lieu of the lands described in the said list as the
73 basis of the selection by it made, other than the lands therein selected.

26th item. On October 19th, 1892, the defendant company filed with the register and receiver of the United States land office at Roseburg its list No. 29, selecting the lands described in paragraph II of the complainant's bill of complaint lying in township 15 south, range 8 west, as indemnity lands granted by the act of Congress referred to in the "1st item" hereof, in lieu of lands of equal area parts of odd-numbered sections lying within the primary limits of the land grant made by the said act of Congress and otherwise disposed of by the United States prior to the passage of the said act; which list was in proper form, accompanied by the fees, costs and charges required by law, and in all respects complied with and conformed to the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office; and on the same day (October 19th, 1892) the said register and receiver carefully examined the said list, and tested its accuracy by the plats and records of their office, and found the same correct in all respects, and upon payment of the requisite fees that day made to the receiver, the register and receiver on that day approved the said list, and duly certified the same as required by law, the directions, rules, regulations, and requirements of the Secretary of the Interior and the Commissioner of the General Land Office. At the time the said list was filed and approved the defendant company had not, nor has it since, selected or received any lands
74 in lieu of the lands described in the said list as the basis of the selection by it made, other than the lands therein selected.

27th item. On September —, 1889, Charles S. Seely, a duly qualified entryman under the homestead laws of the United States, settled upon the N. ½ of N. W. ¼ of section 19, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barns, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $700. On November 12th, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Charles S. Seely, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

28th item. On October 15th, 1889, John W. Carey, a duly qualified entryman under the homestead laws of the United States, settled upon the N. E. ¼ of N. E. ¼ of section 19, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost,

in all, about $500. On October 27th, 1892, and within ninety days after the official plat of the survey of the said land was filed
75 in the United States land office at Roseburg, the said John W. Carey, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

29th item. On April 26th, 1890, Francis W. Huddleston, a duly qualified entryman under the homestead laws of the United States, settled upon the S. W. ¼ of S. E. ¼ of section 18, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same in connection with the W. ½ of N. E. ¼ and N. W. ¼ of S. E. ¼ of section 19, in the same township and range; and from the date of his settlement to the commencement of this suit continued to reside upon the said S. W. ¼ of S. E. ¼ of section 18, and made improvements thereon in the way of a dwelling-house, barns, outhouses, fencing, clearing and the planting of fruit trees, which cost, in all, about $800; and during all of that time he used the said W. ½ of N. E. ¼ and N. W. ¼ of S. E. ¼ of section 19 as pasture land. On November 12th, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Francis W. Huddleston, in good faith, filed his application in the said land office to make homestead entry in his name of and for all of the said land, under the homestead laws of the United States.

30th item. On July —, 1885, Charles E. Banton, a duly qualified entryman under the homestead laws of the United States, settled upon the N. E. ¼ of N. W. ¼, W. ½ of N. W. ¼, and N. W. ¼ of S. W. ¼ of section 25, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same, and
76 from the date of his settlement to the commencement of this suit continued to reside upon the said land off and on, but making it his home, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Charles E. Banton, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land under the homestead laws of the United States.

31st item. On July —, 1883, Uriah W. Wren, a duly qualified entryman under the homestead laws of the United States, settled upon the W. ½ of S. E. ¼, N. E. ¼ of S. W. ¼, and S. E. ¼ of N. W. ¼ of section 25, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost in all, about $2,000. On November 12th, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Uriah W. Wren, in good faith, filed his applica-

tion in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

32d item. On September 17th, 1888, Joseph A. Cox, a duly
77 qualified entryman under the homestead laws of the United States, settled upon the S. ½ of S. E. ¼, N. W. ¼ of S. E. ¼, and S. E. ¼ of S. W. ¼ of section 33, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $300. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Joseph A. Cox, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

33d item. On April —, 1882, George C. Peek, a duly qualified entryman under the homestead laws of the United States, settled upon the S. ½ of S. W. ¼ and N. W. ¼ of S. W. ¼ of section 5, in township 15 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barns, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said George C. Peek, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

78 34th item. On August 10th, 1890, Alfred R. Young, a duly qualified entryman under the pre-emption laws of the United States, settled upon the S. E. ¼ of N. E. ¼ of section 5, township 15 south, range 8 west, Willamette meridian, intending to make pre-emption entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all about $1,200. On December 9th, 1892, and within ninety days after the official plat of the said land was filed in the United States land office at Roseburg, the said Alfred R. Young, in good faith, applied to file a pre-emption claim in the said land office in his name for the said land, under the pre-emption laws of the United States.

35th item. During the year 1878, Abram M. Peek, a duly qualified entryman under the homestead laws of the United States, settled upon N. ½ of S. E. ¼, N. E. ¼ of S. W. ¼ and S. E. ¼ of N. W. ¼ of section 5, in township 15 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his

settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing and the planting of trees, which cost, in all, about $1,700. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Abram M. Peek, in good faith, filed his application in
79 the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

36th item. During the year 1878, J. R. Peters, a duly qualified entryman under the homestead laws of the United States, settled upon the N. W. ¼ of N. E. ¼ of section 7, in township 15 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said J. R. Peters, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

37th item. On October —, 1878, John Sapp, a duly qualified entryman under the homestead laws of the United States, settled upon the N. ½ of N. W. ¼ of section 7, in township 15 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United
80 States land office at Roseburg, the said John Sapp, in good faith, filed his application in the said land office to make homestead entry in his name for the said land under the homestead laws of the United States.

38th item. On May 28th, 1885, Baxter W. Jenkins, a duly qualified entryman under the homestead laws of the United States, settled upon the S. E. ¼ of N. E. ¼ and N. E. ¼ of S. E. ¼ of section 9, township 15 south, range 8 west, Willamette meridian, intending to make homestead entry of the same, and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On November 3d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Baxter W. Jenkins, in good faith, filed his application in the said land office to

make homestead entry in the name of and for the said land, under the homestead laws of the United States.

39th item. On October —, 1869, Louis Heller, a qualified entryman under the homestead laws of the United States, settled upon the S. ½ of S. E. ¼, N. E. ¼ of S. E. ¼, and S. E. ¼ of N. E. ¼ of section 27, in township 27 south, range 11 west, Willimette meridian, intending to make homestead entry of the same; and from the date of his settlement until October —, 1889, he continued to reside upon and cultivate the said land, at which last-mentioned date he died; and after his death his widow and children continued to reside upon the said land; and he and his wife and children made improvements
81 thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing and planting of fruit trees, of the value of about $3,000. On October 25th, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, Charles Heller, one of his sons and heirs-at-law of the said Louis Heller, deceased, duly tendered in the said land office his filing for the benefit of all the heirs-at-law of the said Louis Heller, deceased, as a homestead, for all of the said land.

40th item. That the said selection lists Nos. 27, 28, and 29, set forth in the 24th, 25th and 26th items hereof, were presented to and approved by the Commissioner of the General Land Office and the Secretary of the Interior; and thereafter, on February 20th, 1893, a patent was issued by the proper officers of the United States conveying all the lands described in the complainant's bill of complaint as amended, and herein, to the defendant company; but at the times when the said list was presented to and approved by them as aforesaid neither the Commissioner of the General Land Office nor the Secretary of the Interior had any knowledge of the adverse claims of the said Charles S. Seeley, John W. Carey, Francis W. Huddelston, Charles E. Banton, Uriah W. Wren, Joseph A. Cox, George C. Peck, Alfred R. Young, Abram M. Peek, J. R. Peters, John Sapp, Baxter W. Jenkins, or Charles Heller to the said lands.

41st item. On October 27th, 1893, the land grant made by the act of Congress referred to in the "1st item" hereof was unadjusted, and the Secretary of the Interior regarding the patent referred to in the "40th item" hereof as having been erroneously issued, directed
82 the Commissioner of the General Land Office to demand reconveyance as provided by statute; and in accordance with such directions the Commissioner of the General Land Office did, on that day (October 27th, 1893), duly demand of the defendant company a reconveyance of the lands conveyed by the said patent, and the said company refused, and still refuses, to make such reconveyance.

42d item. That the defendant company claims to be the owner of all the lands conveyed by the patent referred to in the "40th item" hereof, by title in fee-simple absolute; and it withholds all of the said lands from the complainant.

43d item. It is further agreed that this stipulation is, and shall always be, deemed conclusive evidence for the purposes of this suit, of the truth of all the matters and things in it stipulated and agreed

to be true, as fully and effectually as if each and all of such matters and things were, or had been, conclusively proven by the introduction of documents and the testimony of witnesses; but each party reserves the right to introduce further and additional testimony and evidence.

Dated and signed —— —, 1897.

JOHN W. GRIGGS,
United States Attorney General.
—— ——,
United States Attorney for Oregon.
WM. F. HERRIN,
WM. D. FENTON, AND
WM. SINGER, JR.,
Counsel and Attorneys for Defendant.

Filed October 31, 1898.

J. A. SLADEN, *Clerk.*

83 And afterward, to wit, on the 10th day of February, 1899, there was duly filed in said court a stipulation extending time to take testimony, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES, Complainant,
vs.
OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Stipulation Extending Time to Take Testimony.

It is hereby stipulated and agreed between the complainant and defendant that defendant may have sixty days from this 9th day of February, 1899, wherein to take such testimony in the above-entitled suit as it may deem necessary and proper.

JOHN H. HALL,
Attorney for Complainant and United States Attorney,
FENTON, BRONAUGH & MUIR,
Attorneys for Defendant.

Filed February 10, 1899.

J. A. SLADEN, *Clerk.*

84 And afterward to wit, on Friday, the 3d day of March, 1899, the same being the 126th judicial day of the regular October term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILROAD Company. } No. 2272. March 3, 1899.

Order Setting Cause for Final Hearing.

Now, at this day, comes the plaintiff herein by Mr. John H. Hall, United States attorney, and the defendant by Mr. Wm. T. Muir, of counsel, and thereupon, on motion of said plaintiff, it is ordered that the final hearing of this cause be, and it is hereby, set for Monday, May 15, 1899.

85 And afterward, to wit, on Monday, the 15th day of May, 1899, the same being the 30th judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILROAD Co. } No. 2272. May 15, 1899.

Record of Final Hearing and Order Extending Time to File Briefs.

Now, at this day, comes the plaintiff herein by Mr. John H. Hall, United States attorney, the defendant by Mr. J. S. Moseby, who upon motion of said United States attorney, was permitted to appear for said defendant in this cause, and Mr. W. D. Fenton, of counsel, and certain settlers upon the lands referred to in the bill of complaint herein by Mr. W. W. Thayer, Mr. Henry St. Rayner, and Mr. Charles J. Schnabel, of counsel, and, thereupon, this cause comes on for final hearing, and the court having heard the arguments of counsel, will advise thereof.

And thereupon it is ordered that the respective counsel for the parties hereto be, and they are hereby, allowed sixty days in which to file their briefs in this cause.

86 And afterward, to wit, on the 31st day of August, 1899, there was duly filed in said court a stipulation extending time to file briefs, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES, Complainant,
vs.
OREGON & CALIFORNIA RAILROAD COMPANY, Defendant. } No. 2272.

Stipulation Extending Time to File Briefs.

It is hereby stipulated and agreed by and between the parties hereto, acting by and through their respective solicitors, that the defendant, The Oregon & California Railroad Company, may have until and inclusive of the 18th day of September, 1899, in which to file brief herein.

It is further agreed that the said Oregon & California Railroad Company may have until and inclusive of September 18th, 1899, within which to file brief in cases Nos. 2,273, 2,388 and 2,405, 2,422, and 2,501, all of said cases being entitled as above.

It is further stipulated and agreed that the said Oregon & California Railroad Company may have until and inclusive of
87 the said 18th day of September, 1899, within which to file answers and present a proposed statement of facts in cases Nos. 2,560 and 2,561, being entitled as above.

August 31st, 1899.

JOHN H. HALL,
United States Attorney.
W. D. FENTON,
E. C. BRONAUGH, AND
WM. T. MUIR,
Of Attorneys for O. & C. R. R. Co.

Filed August 31, 1899.

J. A. SLADEN, *Clerk.*

And afterward, to wit, on Thursday, the 31st day of August, 1899, the same being the 121st judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILroad Company. } No. 2272. August 31, 1899.

Order Extending Time to File Briefs.

Now, at this day, on motion of Mr. Wm. T. Muir, of counsel for the defendant herein, and upon stipulation of the parties filed herein, it is ordered that said defendant be, and it is hereby, allowed until

and including Monday September 18, 1899, in which to file its brief herein.

88 And afterward, to wit, on Friday, the 27th day of April, 1900, the same being the 16th judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
OREGON & CALIFORNIA RAILROAD Company, } No. 2272. April 27, 1900.

Decree and Order Extending Time to Further Plead.

This cause was heard upon the pleadings and the proofs herein, and was argued by Mr. John H. Hall, United States attorney, of counsel for the plaintiff, and by Mr. W. D. Fenton and Mr. John S. Moseby, of counsel for the defendant, several homestead and pre-emption claimants appearing by Messrs. Thayer, St. Rayner & Schnabel, and thereupon the court took the same under advisement, and having duly considered the same it is now ordered, adjudged, and decreed that the equity of this cause is with the plaintiff, and that the prayer of the bill of complaint herein be, and the same is hereby, allowed; and, it is further ordered that said defendant be, and it is hereby, allowed ten days from this date in which to further move or plead herein.

89 And afterward, to wit, on the 27th day of April, 1900, there was duly filed in said court an opinion of the court, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

UNITED STATES
vs.
OREGON & CALIFORNIA RAILROAD Company. } Cases Nos. 2272, 2273, 2388, 2405, 2422, 2501, 2560, 2561.

Opinion.

John H. Hall, United States district attorney, for the Government.

Wm. D. Fenton and Wm. Singer, Jr., attorneys for the defendant.

Wm. F. Herrin, counsel for the defendant.

Thayer, St. Rayner & Schnabel, for the homestead and pre-emption claimants.

BELLINGER, *J.:*

These are suits to cancel patents issued by the United States to the defendant company, conveying the title to certain odd sections

of land within the indemnity limits of the land grants made by Congress to aid in the construction of the defendant's railroad from Portland to the southern boundary of Oregon, and of its road
90 from Portland, on the west side of the Willamette river, to the town of McMinnville, in this State.

The questions to be determined arise under two acts of Congress granting land to aid in the construction of said railroads, one of July 25, 1866 (14 Stats. at Large, 239), known as the "East Side grant," and the other of May 4, 1870 (16 Stats. at Large, 94), known as the "West Side grant."

Section 2 of the act of July 25, 1866, provides: "That there be, and hereby is, granted * * * every alternate section of public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile (10 on each side) of said railroad line, and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, other lands designated as aforesaid shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than 10 miles beyond the limits of said first-named alternate sections, and as soon as said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad or any portion thereof, not less than 60 continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located, and within the limits before specified."

The act of May 4, 1870, after making grant of lands within
91 the primary limits of the road, provides as follows: "And in case the quantity of 10 full sections per mile cannot be found on each side of said road, within the said limits of 20 miles, other lands, designated as aforesaid, shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than 25 miles from the track of said road, to make up such deficiency."

The suit is brought by the United States for the benefit of some 30 pre-emption and homestead claimants who settled upon the lands in question after the defendant's map of survey or definite location of its railroad was filed with and accepted by the Secretary of the Interior, and after the railroad had been constructed, and accepted by the United States, but before the company filed its lists of selections in the local land office. Those who had thus made settlement upon these lands were in actual occupation of the same at the time the defendant's selections thereof were filed and approved for patenting; and after such selections had been filed and approved for patenting by the land office, but within 90 days of the filing of the official plat of survey of the lands, the settlers applied to file pre-emption and homestead claims therefor. But regardless of these claims, the Government issued its patents to the railroad company. Some of these settlements were begun as early as 1853, and nearly one-half of the claimants have been in possession of

their respective tracts more than 20 years. All have made improvements, the amount of which in some cases is of the agreed value of $3,000.

92 There is a well-established distinction between "granted lands" and "indemity lands" in the construction of land grants in aid of railroads, and the principle is firmly established that the title to lands in the indemnity class does not vest in the railroad company for the benefit of which they are contingently granted, but in the fullest legal sense remains in the United States, until they are actually selected and set apart under the direction of the Secretary of the Interior specifically for indemnity purposes. Until such time the title remains in the Government, subject to its disposal at its pleasure. (Grinnell *vs.* R. R. Co., 103 U. S. 739; St. Paul etc. Railroad *vs.* Winona & St. Peter Railroad, 112 U. S. 720; Kansas Pacific Railroad *vs.* Atchison Railroad, 112 U. S., 414; Cedar Rapids & Missouri River Railroad *vs.* Herring, 110 U. S. 27; Barney *vs.* Winona & St. Peter Railroad, 117 U. S. 228; Sioux City etc. Railroad *vs.* Chicago, Milwaukee etc. Railway, 117 U. S. 406; United States *vs.* Missouri, Kansas & Texas Railway Company, 141 U. S. 374.)

The defendant undertakes to distinguish this case from those cited, upon the authority of the case of St. Paul & Pacific Railroad Company *vs.* Northern Pacific Railroad Company, 139 U. S. 1. That was a case of contest between two railroad companies, and it was held that the exception in the grant to the Northern Pacific Railroad Company of all subsequent grants prior to the definite location of its road was not intended to cover other grants for the construction of roads of a similar character. And in that connection the court says there was no occasion for the exercise of the judg-

93 ment of the Secretary of the Interior in selecting indemnity lands, as all the lands within the indemnity limits only made up in part for the deficiency. The distinction which is sought to be established is based upon this conclusion of the court, that there was no occasion in that case for the exercise of the judgment of the Secretary of the Interior in selecting indemnity lands, and upon the application made of this case in the late case of Southern Pacific *vs.* Groeck, 87 Federal, 970. In the case last referred to the company had accepted the terms of the grant and fixed the general route of its road as contemplated by the act, and filed a map thereof in the office of the Commissioner of the General Land Office, which had been approved, and in pursuance of which the Secretary of the Interior withdrew the odd sections of land, including the land in controversy, from sale or location, pre-emption or homestead entry. Thereafter the Secretary revoked the order of withdrawal, which order of revocation was subsequently suspended. The defendant's title was initiated and was procured at the time the lands had been restored by the setting aside of the order of withdrawal. The court was of the opinion that the subsequent cancellation of the order of withdrawal did not authorize the defendant's pre-emption, which was nevertheless in violation of law and right. But the court further held that, in the case of such a grant as that under considera-

tion, the terms of the grant itself operated to withdraw the indemnity lands from settlement from the moment when a map of the general route of the road was made and filed. In support of the conclusion reached, the court also cited the case of St. Paul
94 Railroad Company *vs.* Winona Railroad, 112 U. S. 720. That was also a case of conflict between two railroad grants, which overlapped, and it was held, as in the cases above cited, that in case of lieu lands, neither priority of grant, nor priority of location nor priority of construction, gives priority of right; but that this is determined by priority of selection when the selection is made according to law.

I do not think that the court intended, in the case of the Southern Pacific Railroad *vs.* Groeck, to establish a new rule for cases of this kind, based upon a distinction between cases where all the lands within the indemnity limits do not more than make up for the deficiency in the primary grant, and cases where the lands within the indemnity limits are more than enough for such deficiency.

It has been the uniform policy of the Government to permit settlement upon indemnity lands—lands contingently granted to aid in the construction of railroads; and this policy has been extended to lands within the primary limits of such grants, by an act passed in 1876 (19 Stat. at Large, 35), which provides for confirmation of all homestead and pre-emption entries made in good faith by actual settlers, upon tracts of not more than 160 acres within the limits of any land grant, prior to the time when notice of the withdrawal of lands embraced in the grant is received at the local land office.

It can make no difference in any case that it turns out that all the odd-numbered sections within the indemnity limits are not more than is required to make up the deficiency in the primary grant. How is the fact to be known? It must be ascertained in some
95 manner. Some action by the Secretary of the Interior is necessary in order to determine it, and there must be public information of the fact when it is determined, so that the interested public may be advised. The only means provided for is that of selections to be made by the Secretary. In this connection the opinion of the court in Wisconsin Central Railroad *vs.* Price County, 133 U. S. 496, has direct application: "He (the Secretary) was required to determine, in the first place, whether there were any deficiencies in the land granted to the company which were to be supplied from indemnity lands; and, in the second place, whether the particular indemnity lands selected could be properly taken for those deficiencies. In order to reach a proper conclusion on these two questions, he had also to inquire and determine whether any lands in the place limits had been previously disposed of by the Government, or whether any pre-emption or homestead rights had attached before the line of the road was definitely fixed. There could be no indemnity unless a loss was established. * * * Until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose; and the indemnity lands remained unaffected in their title. Until then the lands which might be taken as indemnity were incapable of identification; the

proposed selections remained the property of the United States. The Government was, indeed, under a promise to give the company indemnity lands in lieu of what might be lost by the causes mentioned. But such promise passed no title, and, until it was executed, created no legal interest which could be enforced in the courts.

96 The words employed in the two granting acts in the cases in question remove all doubt, if there is otherwise room for doubt: "And when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior," etc. Such is the language employed in the act of 1866. That employed in the act of 1870 is of like effect: "And in case the quantity of 10 full sections per mile cannot be found on each side of said road, within the said limits of 20 miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior," etc.

There is no room to argue that the Secretary is not required by the circumstances of the case to make selections, when he is so required by the mandate of the two granting acts. And these "selections" are indispensable to the operation of the grant within the indemnity limits. It does not otherwise attach to any lands within these limits, and had not so attached at the date of the homestead and pre-emption settlements made by the settlers for whose benefit this suit is brought.

I am of the opinion that these suits are properly brought by the United States; that the contention that when an equitable title is claimed by the homesteader and pre-emptioner, the Government has no actionable interest, cannot be sustained.

97 The case of the United States *vs.* Missouri Railway, 141 U. S. 358 is decisive of the question. That was a case in which the decision of the court was based upon the conclusion that the patents held for cancellation included lands which equitably belonged to *bona fide* settlers, whose rights had been acquired under the homestead and pre-emption laws. As to some of the interests in that case, the jurisdiction was maintained on the ground that the United States was under an obligation to claimants, under the homestead and pre-emption laws, to undo the wrong alleged to have been done by its officers in issuing patents to the company, and thereby enable it to properly administer these lands and give clear title to those whose rights were superior to those of the railway company. It is true that as to some of the lands it appeared from the averments of the bill that the United States had a direct interest; but, as just stated, this was true as to only a part of the lands in question. The jurisdiction was maintained in that case, as it must be in this, upon the ground that there existed on the part of the United States an obligetion to issue patents to the rightful owners of the lands in question, and that they could not perform this obligation until the patents complained of were annulled. The

court further says that these principles equally apply where patents have been issued by mistake, and they are specially applicable where a multiplicity of suits, each one depending upon the same facts and upon the same questions of law, can be avoided, and where a comprehensive decree, covering all contested rights, would accomplish the substantial ends of justice. These considerations have application in the case on trial. There must be a decree as
98 prayed for in the bill in cases Nos. 2,272, 2,273. In cases 2,405, 2,422, 2,560, 2,561, the pleas to the bill are overruled. In cases 2,388, 2,501, the demurrer is overruled.

Filed April 27, 1900.

J. A. SLADEN, *Clerk.*

And afterward, to wit, on Monday, the 7th day of May, 1900, the same being the 24th judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case; to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* THE OREGON & CALIFORNIA RAILROAD CO } No. 2272. May 7, 1900.

Order Extending Time to Further Plead.

Now, at this day, comes the plaintiff herein by Mr. John H. Hall, United States attorney, and the defendant by Mr. W. D. Fenton, of counsel, and thereupon, on motion of said defendant, it is ordered that the time heretofore allowed said defendant in which to further move or plead herein be, and the same hereby is, extended ten days.

99 And afterward, to wit, on Thursday, the 17th day of May, 1900, the same being the 33d judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES *vs.* THE OREGON & CALIFORNIA RAILROAD CO. } No. 2272. May 17, 1900.

Order Extending Time to Further Plead.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the above-named defendant, it is ordered that the time heretofore allowed said defendant in which to further move or plead herein be, and the same is hereby, further extended ten days.

And afterward, to wit, on Monday, the 28th day of May, 1900, the same being the 42d judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

100 In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES
vs.
THE OREGON & CALIFORNIA RAILROAD COMPANY. } No. 2272. May 28, 1900.

Order Extending Time to Further Plead.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendant herein, it is ordered that the time heretofore allowed said defendant in which to further move or plead herein be, and the same is hereby, further extended ten days.

And afterward, to wit, on Friday, the 15th day of June, 1900, the same being the 58th judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

101 In the Circuit Court of the United States for the District of Oregon. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
THE OREGON & CALIFORNIA RAILROAD Company, Defendant. } No. 2272. June 15, 1900.

Final Decree.

This cause was regularly heard by the court upon the pleadings and proofs herein, and was argued by Mr. John H. Hall, United States attorney, and by Mr. John S. Moseby and Mr. W. D. Fenton, of counsel for the above-named defendant; and the court having, on the 27th day of April, 1900, found the equities of this cause, based upon the stipulation of facts entered into between the plaintiff and defendant, and filed herein, to be with the plaintiff in this cause, which said stipulation of facts the court then adopted as its findings of fact, and which said findings of fact are as follows, to wit:

1st item. The act of Congress approved July 25th, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California, to Portland, in Oregon," as printed in volume 14 of the United States

Statutes at Large, on pages 239 and following, is admitted in evidence.

102 2d item. The Oregon Central Railroad Company is a corporation duly incorporated and organized on April 22d, 1867, by and in virtue of the laws of the State of Oregon.

3d item. That the legislature of the State of Oregon, by its joint resolution adopted October 20th, 1868, duly designated the said Oregon Central Railroad Company as the company entitled to receive the lands granted in Oregon, and the benefits and privileges conferred, by the act of Congress referred to in the "1st item" hereof; and prior to the year 1869 the said company duly became entitled to all the benefits, privileges, and grants in the State of Oregon, mentioned in or offered by the said act of Congress.

4th item. The act of Congress approved June 25th, 1868, entitled "An act to amend an act entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon,'" as printed in volume 15 of the United States Statutes at Large, on page 80, is admitted in evidence.

5th item. The act of Congress approved April 10th, 1869, entitled "An act to amend an act entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon,' approved July twenty-five, eighteen hundred and sixty-six," as printed in volume 16 of the United States Statutes at Large, on page 47, is admitted in evidence.

6th item. That on or about July 1st, 1869, the said Oregon Central Railroad Company duly filed in the Department of the Interior its assent to the act of Congress referred to in the "1st item" hereof.

103 7th item. Prior to the month of October, 1869, the said Oregon Central Railroad Company definitely fixed on the ground and surveyed the first section of the railroad in Oregon contemplated and provided for by the act of Congress referred to in the "1st item" hereof, which section of railroad extended from Portland to Jefferson, and comprised not less than sixty continuous miles of railroad from the northern terminus thereof; and on October 29, 1869, the said company filed in the office of the Secretary of the Interior, and the Secretary of the Interior on January 29th, 1870, duly accepted and approved a map of the survey and definite location of the said first section of railroad.

8th item. During the year 1869 and the months of January and February in the year 1870 the said Oregon Central Railroad Company definitely fixed on the ground and surveyed the second section of the railroad contemplated and provided for by the act of Congress referred to in the "1st item" hereof, which section of railroad extended from Jefferson to a point near the southeast corner of section 35, in township 27 south, range 6 west, Willamette meridian, at or near Roseburg, and comprised not less than one hundred and twenty-four continuous miles of railroad from Jefferson; and on March 26th, 1870, the said company filed in the office of the Secre-

tary of the Interior, and the Secretary of the Interior on March 29th, 1870, duly accepted and approved a map of the survey and definite location of the said second section of railroad.

9th item. On April 7th, 1870, the Commissioner of the General Land Office, under direction of the Secretary of the Interior
104 dated March 29th, 1870, withdrew all the odd-numbered sections of land lying within thirty miles on each side of the railroad shown on the map of survey and definite location set forth in the "8th item" hereof from sale or location, pre-emption or homestead entry; and such withdrawal has remained in force, continuously, ever since, excepting in so far as, if at all, it was affected by the order of the Secretary of the Interior made on August 15th, 1887, set forth in the "11th item" hereof.

10th item. That portion of the lands withdrawn on April 7th, 1870, as set forth in the "9th item" hereof, which lie south of township 13 south, were at that date, and have ever since been, situated within the United States district of lands subject of sale and proceedings in the United States local land office at Roseburg, in the State of Oregon; and notice of the said withdrawal was duly received at the local land office at Roseburg on April 25th, 1870.

11th item. On August 15th, 1887, the Secretary of the Interior made an order declaring the withdrawal set forth in the "9th item" hereof revoked as to the odd-numbered sections lying within the indemnity limits of the grant made by the act of Congress referred to in the "1st item" hereof, and declaring the odd-numbered sections lying within the entire indemnity limits of said grant restored to the public domain, subject to pre-emption and homestead entry as well as to the provisions of the land grant made by the last-mentioned act of Congress.

12th item. The defendant, The Oregon & California Railroad Company is, and has been continuously since March 7th, 1870, a corporation, duly organized and existing by and in virtue of the laws of the State of Oregon.

13th item. On or about March 29th, 1870, the defendant,
105 the Oregon & California Railroad Company, duly became the successor and assignee of the said Oregon Central Railroad Company, and at the same time became the owner of and entitled to all the benefits, privileges, and grants in the State of Oregon mentioned in, offered or conferred by the act of Congress referred to in the "1st item" hereof; and the defendant company has ever since so remained.

14th item. During the years 1868 and 1869, and prior to December 25th, 1869, the said Oregon Central Railroad Company constructed and fully equipped the first twenty miles of the railroad contemplated by and provided for in the act of Congress referred to in the "1st item" hereof, commencing at Portland and extending along the line shown upon the map mentioned in the "7th item" hereof.

15th item. During the years 1869 and 1870, and prior to September 1st, 1870, the said Oregon Central Railroad Company and this defendant constructed and fully equipped the second twenty miles of the railroad contemplated by and provided for in the act of Con-

gress referred to in the "1st item" hereof, commencing at the end of the first constructed twenty miles of railroad mentioned in the "14th item" hereof, and extending along the line shown upon the map mentioned in the "7th item" hereof, to a point distant forty miles from the commencement of the said railroad at Portland; a portion of the said second twenty miles of railroad having been so constructed and equipped by the said Oregon Central Railroad Company prior to March 29th, 1870, and the remainder thereof
106 having been so constructed and equipped by the defendant company between March 29th, 1870, and September 1st, 1870.

16th item. That the whole line of railroad contemplated and provided for by the act of Congress referred to in the "1st item" hereof, commencing at the end of the second constructed twenty miles of railroad mentioned in the "15th item" hereof, and extending along the line shown upon the maps mentioned in the "7th item" and "8th item" hereof, was constructed by the defendant company during the years 1870, 1871 and 1872; and prior to December 4th, 1872, the said whole line of railroad from Portland to Roseburg was, and continuously since has been, fully operated for all the purposes contemplated by and provided for in the said act of Congress.

17th item. Commissioners were duly appointed by the President of the United States to examine the said railroad as constructed from Portland to Roseburg; and such commissioners did duly examine all of said railroad, and thereafter duly reported to the President of the United States, under oath, that all of the said railroad had been completed and equipped in all respects as required by the act of Congress referred to in the "1st item" hereof, and that the same was ready for the service contemplated by the said act; and such reports were duly accepted and approved by the President of the United States. That the said commissioners' reports were so made, accepted and approved on the following dates: The first twenty miles, commencing at Portland, report made on December 31st, 1869, accepted and approved on January 29th, 1870; the second twenty miles, report made on October 5th, 1870, accepted and approved on February 28th, 1871; the
107 third and fourth twenty miles, report made on December 10th, 1870, accepted and approved on February 28th, 1871; the fifth twenty miles, report made on August 11th, 1871, accepted and approved on March 11th, 1872; the sixth twenty miles, report made on January 13th, 1872, accepted and approved on March 11th, 1872; the seventh, eighth, and ninth sections, including the last seventy-eight miles of the said railroad from Portland to Roseburg, report made on July 10th, 1878, accepted and approved on July 11th, 1878.

18th item. The remaining part of the railroad in Oregon contemplated and provided for by the act of Congress referred to in the "1st item" hereof, extending from Roseburg to the southern boundary of Oregon, was actually constructed, fully equipped, and made ready by the defendant company for the service contemplated by the said act, in several sections, during the years 1878 to 1889, in-

clusive, and all prior to the year 1890; and at various times prior to the last-mentioned date, commissioners, examined the same as the several sections thereof were constructed, and duly reported under oath to the President of the United States that the same had been completed and equipped in all respects as required by the said act of Congress, and that the same was ready for the service contemplated by the said act; and at various times prior to the last-mentioned date the President of the United States duly accepted and approved the said reports.

19th item. All of the lands described in paragraph II of the complainant's bill of complaint are distant more than twenty
108 miles from, but lie within thirty miles on one side of, the railroad extending from Jefferson to Roseburg, shown on the map filed on March 26th, 1870, and approved by the Secretary of the Interior on March 29th, 1870, referred to in the "8th item" hereof; and the said lands are distant more than twenty miles from, but lie within thirty miles on one side of, that portion of the railroad of the defendant company as constructed and equipped, which extends from Jefferson to Roseburg; and all of the said lands were included and embraced by the withdrawal set forth in the "9th item" hereof.

20th item. No part or portion of the lands described in paragraph II of the complainant's bill of complaint is mineral land, nor included by any exception or reservation from the indemnity land grant in Oregon made by the act of Congress referred to in the "1st item" hereof, except in so far as, if at all, they were excepted or reserved therefrom by reason of the several settlements, performances and proceedings hereinafter set forth.

21st item. The official plat of the survey of township 27 south, range 11 west, Willamette meridian, was filed in the United States land office at Roseburg, Oregon, on August 16th, 1892; and the official plats of the survey of townships 14 south and 15 south, range 8 west, same meridian, were filed in the said land office on October 19th, 1892.

22d item. On August 16th, 1892, all the lands described in paragraph II of the complainant's bill of complaint lying within the said township 27 south, range 11 west, were free and clear for selection by the defendant company as part and parcel of the indemnity
109 lands granted by the act of Congress referred to in the "1st item" hereof, except in so far as, if at all, they were excepted or reserved therefrom by reason of the several settlements, performances and proceedings hereinafter set forth; and on October 19th, 1892, all the lands in paragraph II of the complainant's bill of complaint lying within the said townships 14 south and 15 south, range 8 west, were free and clear for selection by the defendant company as part and parcel of the indemnity lands granted by the said act of Congress, except in so far as, if at all, they were excepted or reserved therefrom by reason of the several settlements, performances, and proceedings hereinafter set forth.

23d item. On November 7th, 1879, the Secretary of the Interior approved and issued a general circular of instructions relating to

the adjustment of railroad land grants, prescribing the form and procedure for the selection by railroad companies of lands within the primary and indemnity limits of land grants made by Congress to such companies; which circular has, ever since its date, remained in force and operation as to the following, among other, directions therein made by the Secretary of the Interior, relating to the lists required to be filed by railroad companies in selecting lands within the primary and indemnity limits of their land grants from Congress, to wit: "The lists must be carefully and critically examined by the register and receiver, and their accuracy tested by the plats and records of their office. When so examined and tested and found correct in all respects, they will become final locations, and
110 you will, on the payment of the requisite fees to the receiver, so certify at the foot of each list, according to form B."

24th item. On August 16th, 1892, the defendant company filed with the register and receiver of the United States land office at Roseburg, its list No. 27, selecting the lands described in paragraph II of the complainant's bill of complaint lying in township 27 south, range 11 west, as indemnity lands granted by the act of Congress referred to in the "1st item" hereof, in lieu of lands of equal area parts of odd-numbered sections lying within the primary limits of the land grant made by the said act of Congress and otherwise disposed of by the United States prior to the passage of the said act; which list was in proper form accompanied by the fees, costs and charges required by law, and in all respects complied with and conformed to the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office; and on the same day (August 16th, 1892) the said register and receiver carefully examined the said list, and tested its accuracy by the plats and records of their office, and found the same correct in all respects, and upon payment of the requisite fees that day made to the receiver, the register and receiver on that day approved the said list, and duly certified the said list as required by law, the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office. At the time the said list was filed and approved the defendant company had not, nor has it since, selected or received any lands in
111 lieu of the lands described in the said list as the basis of the selection by it made, other than the lands so selected by the said list.

25th item. On October 19th, 1892, the defendant company filed with the register and receiver of the United States land office at Roseburg its list No. 28 selecting the lands described in paragraph II of the complainant's bill of complaint lying in township 14 south, range 8 west, as indemnity lands granted by the act of Congress referred to in the "1st item" hereof, in lieu of lands of equal area, parts of odd-numbered sections lying within the primary limits of the land grant made by the said act of Congress and otherwise disposed of by the United States prior to the passage of the said act; which list was in proper form, accompanied by the fees, costs and charges required by law, and in all respects complied with and con-

formed to the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office; and on the same day (October 19th, 1892) the said register and receiver carefully examined the said list, and tested its accuracy by the plats and records of their office, and found the same correct in all respects, and upon payment of the requisite fees that day made to the receiver, the register and receiver on that day approved the said list, and duly certified the same as required by law, the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office. At the time the said list was filed and approved the defendant company had not, nor has it since, selected or received any lands in lieu of the lands described in the said list as the basis of the
112 selection by it made, other than the lands therein selected.

26th item. On October 19th, 1892, the defendant company filed with the register and receiver of the United States land office at Roseburg its list No. 29, selecting the lands described in paragraph II of the complainant's bill of complaint lying in township 15 south, range 8 west, as indemnity lands granted by the act of Congress referred to in the "1st item" hereof, in lieu of lands of equal area parts of odd-numbered sections lying within the primary limits of the land grant made by the said act of Congress and otherwise disposed of by the United States prior to the passage of the said act; which list was in proper form, accompanied by the fees, costs and charges required by law, and in all respects complied with and conformed to the directions, rules, regulations and requirements of the Secretary of the Interior and the Commissioner of the General Land Office; and on the same day (October 19th, 1892) the said register and receiver carefully examined the said list, and tested its accuracy by the plats and records of their office, and found the same correct in all respects, and upon payment of the requisite fees that day made to the receiver, the register and receiver on that day approved the said list, and duly certified the same as required by law, the directions, rules, regulations, and requirements of the Secretary of the Interior and the Commissioner of the General Land Office. At the time the said list was filed and approved the defendant company had not, nor has it since, selected or received any lands in
113 lieu of the lands described in the said list as the basis of the selection by it made, other than the lands therein selected.

27th item. On September —, 1889, Charles S. Seely, a duly qualified entryman under the homestead laws of the United States, settled upon the N. ½ of N. W. ¼ of section 19, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barns, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $700. On November 12th, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Charles S. Seely, in good faith, filed his application in the said land office to make homestead entry in

his name of and for the said land, under the homestead laws of the United States.

28th item. On October 15th, 1889, John W. Carey, a duly qualified entryman under the homestead laws of the United States, settled upon the N. E. ¼ of N. E. ¼ of section 19, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $500. On October 27th, 1892, and within ninety days after the official plat of the survey of the said land was filed in the
114 United States land office at Roseburg, the said John W. Carey, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

29th item. On April 26th, 1890, Francis W. Huddleston, a duly qualified entryman under the homestead laws of the United States, settled upon the S. W. ¼ of S. E. ¼ of section 18, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same in connection with the W. ½ of N. E. ¼ and and N. W. ¼ of S. E. ¼ of section 19, in the same township and range; and from the date of his settlement to the commencement of this suit continued to reside upon the said S. W. ¼ of S. E. ¼ of section 18, and made improvements thereon in the way of a dwelling-house, barns, outhouses, fencing, clearing and the planting of fruit trees, which cost, in all, about $800; and during all of that time he used the said W. ½ of N. E. ¼ and N. W. ¼ of S. E. ¼ of section 19 as pasture land. On November 12th, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Francis W. Huddleston, in good faith, filed his application in the said land office to make homestead entry in his name of and for all of the said land, under the homestead laws of the United States.

30th item. On July —, 1885, Charles E. Banton, a duly qualified entryman under the homestead laws of the United States, settled upon the N. E. ¼ of N. W. ¼, W. ½ of N. W. ¼, and N. W. ¼ of S. W. ¼ of section 25, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same, and
115 from the date of his settlement to the commencement of this suit continued to reside upon the said land off and on, but making it his home, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Charles E. Banton, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land under the homestead laws of the United States.

31st item. On July —, 1883, Uriah W. Wren, a duly qualified entryman under the homestead laws of the United States, settled

upon the W. ½ of S. E. ¼, N. E. ¼ of S. W. ¼, and S. E. ¼ of N. W. ¼ of section 25, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost in all, about $2,000. On November 12th, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Uriah W. Wren, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

32d item. On September 17th, 1888, Joseph A. Cox, a duly
116 qualified entryman under the homestead laws of the United States, settled upon the S. ½ of S. E. ¼, N. W. ¼ of S. E. ¼, and S. E. ¼ of S. W. ¼ of section 33, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $300. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Joseph A. Cox, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

33d item. On April —, 1882, George C. Peek, a duly qualified entryman under the homestead laws of the United States, settled upon the S. ½ of S. W. ¼ and N. W. ¼ of S. W. ¼ of section 5, in township 15 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barns, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said George C. Peek, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

117 34th item. On August 10th, 1890, Alfred R. Young, a duly qualified entryman under the pre-emption laws of the United States, settled upon the S. E. ¼ of N. E. ¼ of section 5, township 15 south, range 8 west, Willamette meridian, intending to make pre-emption entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,200. On December 9th, 1892, and within

ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Alfred R. Young, in good faith, applied to file a pre-emption claim in the said land office in his name for the said land, under the pre-emption laws of the United States.

35th item. During the year 1878, Abram M. Peek, a duly qualified entryman under the homestead laws of the United States, settled upon N. ½ of S. E. ¼, N. E. ¼ of S. W. ¼ and S. E. ¼ of N. W. ¼ of section 5, in township 15 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing and the planting of trees, which cost, in all, about $1,700. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg,

the said Abram M. Peek, in good faith, filed his application
118 in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

36th item. During the year 1878, J. R. Peters, a duly qualified entryman under the homestead laws of the United States, settled upon the N. W. ¼ of N. E. ¼ of section 7, in township 14 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwel' ng-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said J. R. Peters, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

37th item. On October —, 1878, John Sapp, a duly qualified entryman under the homestead laws of the United States, settled upon the N. ½ of N. W. ¼ of section 7, in township 15 south, range 8 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On October 22d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the

United States land office at Roseburg, the said John Sapp,
119 in good faith, filed his application in the said land office to make homestead entry in his name for the said land under the homestead laws of the United States.

38th item. On May 28th, 1885, Baxter W. Jenkins, a duly qualified entryman under the homestead laws of the United States, settled upon the S. E. ½ of N. E. ¼ and N. E. ¼ of S. E. ¼ of section 9,

township 15 south, range 8 west, Willamette meridian, intending to make homestead entry of the same, and from the date of his settlement to the commencement of this suit continued to reside upon the said land, and made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing, and the planting of trees, which cost, in all, about $1,500. On November 3d, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, the said Baxter W. Jenkins, in good faith, filed his application in the said land office to make homestead entry in his name of and for the said land, under the homestead laws of the United States.

39th item. On October —, 1869, Louis Heller, a qualified entryman under the homestead laws of the United States, settled upon the S. ½ of S. E. ¼, N. E. ¼ of S. E. ¼, and S. E. ¼ of N. E. ¼ of section 27, in township 27 south, range 11 west, Willamette meridian, intending to make homestead entry of the same; and from the date of his settlement until October —, 1889, he continued to reside upon and cultivate the said land, at which last-mentioned date he died; and after his death his widow and children continued to reside upon the said land; and he and his wife and
120 children made improvements thereon in the way of a dwelling-house, barn, outhouses, fencing, clearing and planting of fruit trees, of the value of about $3,000. On October 25th, 1892, and within ninety days after the official plat of the survey of the said land was filed in the United States land office at Roseburg, Charles Heller, one of the sons and heirs-at-law of the said Louis Heller, deceased, duly tendered in the said land office his filing for the benefit of all the heirs-at-law of the said Louis Heller, deceased, as a homestead, for all of the said land.

40th item. That the said selection lists No. 27, 28, and 29, set forth in the 24th, 25th and 26th items hereof, were presented to and approved by the Commissioner of the General Land Office and the Secretary of the Interior; and thereafter, on February 20th, 1893, a patent was issued by the proper officers of the United States conveying all the lands described in the complainant's bill of complaint as amended, and herein, to the defendant company; but at the times when the said list was presented to and approved by them as aforesaid neither the Commissioner of the General Land Office nor the Secretary of the Interior had any knowledge of the adverse claims of the said Charles S. Seeley, John W. Carey, Francis W. Huddelston, Charles E. Banton, Uriah W. Wren, Joseph A. Cox, George C. Peck, Alfred R. Young, Abram M. Peck, J. R. Peters, John Sapp, Baxter W. Jenkins, or Charles Heller to the said lands.

41st item. On October 27th, 1893, the land grant made by the act of Congress referred to in the "1st item" hereof was unadjusted, and the Secretary of the Interior regarding the patent referred to in the "40th item" hereof as having been erroneously issued, di-
121 rected the Commissioner of the General Land Office to demand reconveyance as provided by statute; and in accordance with such directions the Commissioner of the General Land Office did, on that day (October 27th, 1893), duly demand of the

defendant company a reconveyance of the lands conveyed by the said patent, and the said company refused, and still refuses, to make such reconveyance.

42d item. That the defendant company claims to be the owner of all the lands conveyed by the patent referred to in the "40th item" hereof, by title in fee-simple absolute; and it withholds all of the said lands from the complainant.

Now therefore, on motion of Mr. John H. Hall, United States attorney for the district of Oregon, and predicated upon said findings of fact, heretofore made and entered, it is ordered, adjudged, and decreed that the patent issued by the President of the United States, on February 20th, 1892, to the Oregon & California Railroad Company, to the following-described lands, to wit:

The north half of the northwest quarter of section seven (7), township fifteen (15) south, range eight (8) west, of the Willamette meridian; the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section nine (9), township fifteen (15) south, range eight (8) west, of the Willamette meridian; the south half of the southeast quarter, and the northeast quarter of the southeast quarter, and the southeast quarter of
122 the northeast quarter of section twenty-seven (27), township twenty-seven (27) south, range eleven (11) west, of the Willamette meridian; the north half of the northwest quarter of section nineteen (19), township fourteen south, range eight (8) west, of the Willamette meridian; the northwest quarter of the northeast quarter of section seven (7), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the south half of the southeast quarter, and the northwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section thirty-three (33), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the northeast quarter of the southeast quarter of section nineteen (19), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the west half of the southeast quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section twenty-five (25), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the north half of the southeast quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian; the southeast quarter of the northeast quarter of section five (5), township fifteen (15) south, range eight (8) west, of the Willamette meridian; the west half of the northeast quarter, and the northwest quarter of the southeast quarter of section
123 nineteen (19), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the northeast quarter of the northwest quarter, and the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-five (25), township fourteen (14) south, range eight (8) west, of the Willamette meridian; the south half of the southwest quarter, and the northwest quarter of the southwest quarter of section five (5),

township fifteen (15) south, range eight (8) west of the Willamette meridian; be, and the same is hereby, decreed to be set aside, canceled, and held to be null and void, and the legal title thereto to be restored to vest in the United States of America, and that the plaintiff herein do have and recover of and from defendant its costs and disbursements of this suit, taxed at $—.

CHARLES B. BELLINGER, *Judge.*

Filed June 15, 1900.

J. A. SLADEN, *Clerk.*

And afterward, to wit, on the 11th day of August, 1900, there was duly filed in said court a petition for appeal and supersedeas, in words and figures as follows, to wit:

124 In the Circuit Court of the United States, Ninth Circuit, for the District of Oregon.

UNITED STATES, Complainant and Appellee,
vs.
OREGON & CALIFORNIA RAILROAD COMPANY, Defendant and Appellant. } No. 2272.

Petition for Allowance of Appeal and Supersedeas.

The defendant in the above-entitled suit, conceiving itself aggrieved by the decree made and entered herein on June 15th, 1900, granting unto the complainant the relief prayed for in its bill of complaint, hereby appeals from the said decree to the United States circuit court of appeals for the ninth circuit; and the defendant files herewith its assignment of errors asserted and intended to be urged on appeal.

The defendant prays an order of this court allowing its appeal, and directing that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the ninth circuit; and that by the order of this court all further proceedings in
125 this cause, and upon said decree, may be stayed pending this appeal, upon its (defendant's) giving a good and sufficient bond to be approved by this court.

Dated and signed on August 11th, 1900.

WM. D. FENTON AND
WM. SINGER, JR.,
Attorneys for Defendant.

WM. F. HERRIN,
Counsel for Defendant.

Filed August 11, 1900.

J. A. SLADEN, *Clerk.*

And afterward, to wit, on the 11th day of August, 1900, there was duly filed in said court an assignment of errors, in words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, for the District of Oregon.

UNITED STATES, Complainant and Appellee,
vs.
OREGON & CALIFORNIA RAILROAD COMPANY, Defendant and Appellant. } No. 2272.

Assignment of Errors.

In connection with its petition for allowance of appeal herein, the defendant makes and files this assignment of errors made by
126 the court, in its decree entered in this cause on June 15th, 1900.

It is stipulated by counsel, and found in the decree, that none of the lands in suit are mineral lands, nor included by any exception or reservation from the indemnity grant made to the defendant by the act of July 25th, 1866, except in so far as, if at all, they were excepted or reserved therefrom by reason of the several filings and settlement claims set forth in the bill and decree (20th item, decree); in other words, it is, in effect, agreed by the parties and found by the court that the lands in suit were properly patented to the defendant, unless the issue of such patent was rendered unlawful by those filings and settlement claims. In adjudging and decreeing the defendant's patent null, void, set aside and canceled, and the lands thereof restored to the United States, the court erred as follows:

1st. Because the said act of July 25th, 1866, granted *in presenti*, and immediately transferred unto and conferred upon the defendant a vested right to select the lands in suit in part satisfaction of the amount of land granted; and all of the said filings were made, and settlements initiated, subsequent to the said grant, subsequent to definite location of the defendant's railroad, and subsequent to the construction and acceptance of the defendant's railroad.

2d. Because, as stipulated and found, defendant's map of survey and definite location was duly accepted and approved by the Secretary of the Interior on March 26th, 1870. Thereupon, on that date, the lands in suit were, by the force and effect of the said act,
127 reserved, set apart and withdrawn for the purposes of, and to satisfy, the defendant's grant, and have ever since so remained; hence none of said lands were public lands, nor subject to the said settlements or filings, at any of the times when such settlements or filings were made.

3d. Because, as shown by defendant's undisputed evidence, all the odd sections, and parts of odd sections, within both primary and indemnity limits of the defendant's grant, not finally disposed of by the United States otherwise than to the defendant, are insufficient to make or equal the amount or quantity of land granted. Therefore all the lands in suit were granted to the defendant by force and effect of the said act, without any selection thereof being required; hence none of the lands in suit were public lands, nor subject to the said

settlements or filings, at any of the times when such settlements or filings were made.

4th. Because, as stipulated and found, the defendant selected the lands in suit in accordance with the instructions and directions of the Secretary of the Interior; and at all the times when such selections were filed and approved by the register and receiver of the United States land office, none of the said filings or entries had been tendered or made. Hence all the pre-emption and homestead filings set forth in the bill and decree were unlawfully permitted, and were null and void *ab initio*.

5th. Because, as stipulated and found, the defendant's map of definite location was accepted and approved by the Secretary of the Interior on March 26th, 1870, and due notice of withdrawal by the Secretary of the Interior of the lands in suit was received at
128 the proper local land office of the United States on April 25th, 1870; hence none of the settlement claims set forth in the bill and decree are within the provisions of the act approved April 21st, 1876, referred to in the said bill.

6th. Because, as stipulated and found, the defendant's railroad from Portland to Roseburg, through and beyond all the lands in suit, was fully constructed and equipped prior to December 4th, 1872, and continuously after that date was operated for all the purposes contemplated by and provided for in the said granting act; and that portion thereof extending through and beyond all the lands in suit except the tract described in the "39th item" of the decree, was finally accepted by the United States prior to March 12th, 1872. For these further reasons the said act approved April 21st, 1876, is in nowise applicable to the settlement claims set forth in the bill and decree.

7th. Because, as stipulated and found, each homestead claim set forth in the bill and decree was filed during the year 1892; hence none of such homestead claimants can lawfully allege settlement prior to the act of Congress approved on May 14th, 1880 (21 U. S. Stat. 141).

8th. Because, as shown by the facts stipulated and found, the United States has no such interest in the relief prayed for or given by the decree as will maintain this suit or sustain the decree.

9th. Because, as shown by the facts stipulated and found, the decree should have been for defendant as prayed, with costs.

Wherefore, the defendant (appellant) prays that the decree entered herein be reversed, that the complainant's bill be dismissed,
129 and that it (defendant) be given the relief prayed.

WM. D. FENTON AND
WM. SINGER, JR.,
Attorneys for the Defendant.

WM. F. HERRIN,
Counsel for the Defendants.

Filed August 11, 1900.

J. A. SLADEN, *Clerk.*

And afterward, to wit, on Saturday, the 11th day of August, 1900, the same being the 106th judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States, Ninth Circuit, for the District of Oregon.

UNITED STATES, Complainant and Appellee,
vs.
OREGON & CALIFORNIA RAILROAD COMPANY, Defendant and Appellant. } No. 2272.

Order Granting Appeal and Supersedeas.

Having considered the defendant's petition for the allowance of appeal and supersedeas from the decree made and entered herein on June 15th, 1900, and the assignment of errors filed therewith, on motion of Mr. Wm. D. Fenton, of counsel for the defendant,
130 the appeal of the defendant is allowed as prayed, upon giving a bond to be approved by this court, in the sum of $500.00; which bond shall operate as a supersedeas from the date of its approval.

And it is further ordered that a transcript of the record, proceedings, and papers upon which the said decree was made, duly authenticated, be sent by the clerk of this court to the United States circuit court of appeals, ninth circuit, at San Francisco, California.

Dated and signed on August 11th, 1900.

CHARLES B. BELLINGER, *Judge.*

Filed August 11, 1900.

J. A. SLADEN, *Clerk.*

And afterward, to wit, on the 13th day of August, 1900, there was duly filed in said court a bond on appeal, in words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, for the District of Oregon.

UNITED STATES, Complainant and Appellee,
vs.
OREGON & CALIFORNIA RAILROAD COMPANY, Defendant and Appellant. } No. 2272.

Bond on Appeal.

We, R. Koehler and C. G. Sutherland, each of Portland, Oregon, are held and firmly bound unto The United States, com-
131 plainant above named, in the sum of $500.00, to be paid unto the said complainant; for the payment of which, well

and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The Oregon & California Railroad Company, defendant above named, has been allowed an appeal to the United States circuit court of appeals for the ninth circuit, and supersedeas, from the decree entered in the above-entitled suit on June 15th, 1900; and the condition of this obligation is, that if the said Oregon & California Railroad Company shall prosecute its appeal to effect, and answer the costs taxed in the decree appealed from, together with all damages, interest, and cost of such appeal and supersedeas, if it (defendant) fails to make its said appeal good, then this obligation to be void; otherwise to remain in full force.

Dated, signed and sealed on August 11th, 1900.

R. KOEHLER. [SEAL.]
C. G. SUTHERLAND. [SEAL.]

STATE OF OREGON, } ss:
County of Multnomah, }

R. Koehler and C. G. Sutherland, being duly sworn, each for himself says: I am one of the sureties to the foregoing bond, and subscribed my name thereto. I am a resident of, and freeholder within, the State and district of Oregon, and am worth the sum of $500.00 over and above all my just debts and liabilities, in property situated in said district, exclusive of property exempt from execution.

R. KOEHLER.
C. C. SUTHERLAND.

132 Subscribed and sworn to before me on August 11th, 1900.

[SEAL.] DAVID LORING,
Notary Public in and for Multnomah County, Oregon.

The foregoing bond approved on August 13th, 1900.

CHARLES B. BELLINGER, *Judge.*

Filed August 13, 1900.

J. A. SLADEN, *Clerk.*

And, to wit, on the 10th day of March, 1900, there was duly filed in said court, depositions in words and figures as follows to wit:

Circuit Court of the United States, Ninth Circuit, District of Oregon.

UNITED STATES OF AMERICA, Complainant, vs. OREGON & CALIFORNIA RAILROAD CO., Defendant.	Nos. 2272, 2273, 2405, 2422.

Stipulation to Take Testimony.

It is stipulated and agreed by the undersigned, as follows:

That the testimony for the defendant in the above-entitled cases may now be taken at San Francisco, California, by Clement
133 Bennett, as special examiner; and that *nunc pro tunc* orders may be entered in the above-entitled court and cases, by consent, appointing Mr. Clement Bennett such special examiner, to take and report the testimony herein specified.

It is further agreed that the testimony under this stipulation shall be taken at the office of Wm. Singer, Jr., rooms 61 and 62, Union Trust building, San Francisco, California, commencing on February 20, 1899, and continuing from day to day until completed; and shall be reported in one record applicable alike to the four cases, as may be, and filed with the clerk of the above-entitled court, within twenty days after the taking thereof shall have been completed.

It is further agreed that caption and all formalities are waived; and that the testimony so to be taken shall, when reported, be deemed regular in all respects, and have the same force and effect as if the said Clement Bennett had been heretofore duly appointed such special examiner, and the testimony taken within the district of Oregon. The testimony so reported to be deemed evidence alike in the four cases, subject to such objections as may be made in the course of taking the same.

Dated and signed on February 20th, 1899.

JOHN H. HALL,
United States Attorney for the District of Oregon.
WM. SINGER, JR.,
Attorney for the Defendant.

134 Circuit Court of the United States, Ninth Circuit, District of Oregon.

UNITED STATES OF AMERICA, Complainant, *vs.* OREGON & CALIFORNIA RAILROAD CO., Defendant.	Nos. 2272, 2273, 2405, 2422.

Testimony.

Testimony taken on behalf of the defendant by and before Clement Bennett, special examiner and stenographer, in pursuance of the foregoing stipulation, at the office of Wm. Singer, Jr., rooms 61 and 62, Union Trust building, San Francisco, California, commencing on Monday, February 20, 1899.

Present: Mr. John H. Hall, United States attorney for the district of Oregon, attorney for the complainant, and Mr. Wm. Singer, Jr., attorney for the defendant.

Thereupon the following proceedings were had:

Testimony of Wm. Singer, Jr.

WM. SINGER, JR., called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

135 The WITNESS: I am general attorney for the respective railroad companies owning the land grants made to the Southern Pacific Railroad Company, the Central Pacific Railroad Company, the California & Oregon Railroad Company, the Oregon & California Railroad Company, and the Oregon Central Railroad Company. In the year 1867, when I was about sixteen years of age, I became a clerk in the United States land office at Marysville, and continuously since that time, with the exception of about four years, when I served in the county clerk's office, I have been either a clerk in the United States land office, or a practitioner, in extensive and active practice, in the United States land offices. In August, 1878, I became land-office attorney for the California & Oregon grant, extending from Roseville Junction, on the line of the Central Pacific railroad, to the boundary line between Oregon and California. Prior to that time, however, I had done considerable work for the railroad company. About that time, I commenced making a set of title books of the California & Oregon railroad grant, for the use of the Central Pacific Railroad Company in transacting its land business under that grant, from the Marysville and Redding land offices. The abstract books which I then made in 1878, or 1879, as since added to by abstracts made by me, or under my supervision, are the books which have ever since been the basis for the transaction of the company's business under that land grant. In 1879 I made abstracts of the Central Pacific Company's land grant in the Territory of Utah. Up to that time the company had no record books whatever in respect of its land grant in

Utah. The books made from the abstracts then prepared by me are the ones now in use, and which have been in
136 continuous use since I made them. After that, I made an abstract of the Central Pacific grant in the State of California, from the records of the United States land offices; and the books made from those abstracts constitute the basis on which the company does its business under that land grant. At the time of making these abstract books, I was entirely familiar with the United States Government system of book-keeping, with the rules and regulations of the Land Department, and with the decisions made by the Land Department. Under these rules and regulations the railroad companies are required to prepare what are known as selection lists, and they cannot, under the system, procure patent for any tract of land until after such lists have been made and approved. The rules and regulations in respect to those lists require that they be without interpolation or erasure, and if, when presented, they are found to contain a single tract erroneously, not patentable to the company, they are sent back for correction—which necessitates a rewriting. The lists are gotten up in five editions, and before they are presented to the local land officers for approval, we pay the costs of survey into the Treasury of the United States; and in paying it in, a specification of the particular list, by its serial number, and the land office in which it is to be filed, is given. The rejection of the list, therefore, not only involves the labor and expense of rewriting of the lists, but frequently leaves the company with an excess payment in the Treasury, the rewritten lists containing a lesser quantity of land to the extent of the area of the tracts erroneously included in the rejected lists. I speak of this to show you, Mr. Hall, how very careful I
137 should have been, and was, in making these abstracts of title; and I have spoken first of my abstracts other than those of the Oregon grants, that I may in that connection give the result of our experiences with them, for such suggestion as it may carry as to the probable accuracy of my Oregon abstracts. I do not remember of a list made out from my books in Utah, having been rejected for an error—although I am not prepared to say that none ever were rejected for that reason; but they have proved remarkably correct. As to the Oregon & California grant, the lists are generally found correct when presented, and there have been but few occasions for rejecting them because of differences between our records and the United States Land Office records.

And now as to my abstracts of the Oregon & California grant and the Oregon Central grant: They were made, I believe, in the year 1889—somewhere between 1888 and 1890. I went to Oregon for that purpose, with a force of five or six competent clerks, familiar with land office book-keeping. Before going to Oregon, I had procured from the General Land Office at Washington certified copies of the limit-lines maps, showing the finally adjusted twenty and thirty mile limit lines of the Oregon & California grant, and the finally adjusted twenty and twenty-five mile limit lines of the Oregon Central grant. From those certified copies *I procured to — made*

this map, which I will exhibit to you, Mr. Hall, and will request the examiner to mark it for identification "Defendant's Exhibit No. 1."

(The map is marked "Defendant's Exhibit No. 1. Clement Bennett, special examiner.")

138 Mr. HALL:

Q. I will ask you, Mr. Singer, whether or not "Defendant's Exhibit No. 1" is a correct copy of maps on file in the Land Department at Washington.

A. It is. It is a correct representation of limit lines shown upon maps procured by me from the office of the Commissioner of the General Land Office, and certified to by the Commissioner. I will say, also, that the limit lines, as marked on this map, were compared with the United States Land Office maps in the local land offices at Oregon City, Roseburg and Lakeview, and in instances where they differed from those maps, inquiries were made through our attorneys at Washington as to which were correct, and the true lines thus ascertained were platted on this map, "Defendant's Exhibit No. 1."

Q. For what purpose was the map caused to be made by the defendant company?

A. As the basis of the abstracts which I was to make, and did afterward make, of the two grants mentioned. It was for the purpose of ascertaining, technically and nicely, just what tracts of land were within the primary limits, and what tracts of land were within the indemnity limits, of these two grants.

Q. Was it not made with a view of being used as an exhibit in this or other suits or actions between the company and the United States Government?

A. It was made solely for the information and use of the company's land department, in order that they might have absolutely correct records—without any thought of suit; and it has been used ever since it was made, about 1889, and acted upon by our land department, as truly and correctly showing the limit lines of those grants.

139 Mr. HALL: The plaintiff consents that the said map marked "Defendant's Exhibit No. 1" may be admitted and used in evidence in the foregoing cases, subject, however, to the right of the plaintiff to check up and determine the accuracy of said exhibits. That will be satisfactory.

The WITNESS: Except that the map is in daily use here, and could — be spared for a long time.

Mr. HALL: I have a copy of it.

The WITNESS: With this map as a basis, showing the limit lines, I commenced work with my force in the United States surveyor general's office at Portland, Oregon, and made township plats of each township shown to be within the limits on this map; which plats made by me were true copies of the official maps on file in the surveyor general's office. After I had finished the township plats and marked upon them the limit lines, I went with my force to

Oregon City, and we were given access to the United States land office at nights; and with this force I abstracted all filings and entries, and all matters which in anywise could affect the status of the odd sections within the limits of either of the two grants—the Oregon & California and the Oregon Central. These abstracts were checked up by the clerks reading in my presence; and the sheets upon which they were made were all marked with my symbol, to indicate such examination, and that abstracts were correct. From those abstract notes I prepared the tract books from which our company has ever since conducted its business of listing lands and selling lands. Those tract books show generally two sections to the
140 page, and in so far as the lands have not been disposed of by the Government, otherwise than to the railroad company, each section is thrown out into its smallest legal subdivisions; so that a square section of 640 — represents sixteen lines of the tract book. These tract books are 17 by 22 inches in size, contain about 500 pages each, and there are thirteen books and five adverse-claim books, comprising the set of books showing the Oregon & California grant; and there is one tract book and one adverse-claim book, making the set of Oregon Central land-grant books.

In addition to the books mentioned, a set of lieu books, which I will now exhibit, and ask to be marked for identification as Defendant's Exhibits respectively Nos. 2, 3, 4, 5, 6, and 7, were made up from my abstracts. They are known in our company's land office as lieu books of the Oregon & California grant. Five of the books run out by subdivision, section, township, range, and acres, all lands comprising such parts of odd sections within the primary limits of the grant as are covered by adverse claims; and against the description is written the particular adverse claim affecting the tracts, by reference to land-office numbers, dates, etc. The sixth book is a similar book of lands disposed of otherwise than to the railroad company by the United States, within the indemnity limits of the grant. The purpose of these books is to show the particular tracts in the primary limits of the grant, excepted or lost to the company therefrom by governmental disposition; such tracts to be used as basis in making indemnity lieu selections. The indemnity lieu books are for the purpose of showing, by items, the particular
141 lands within the indemnity limits that have been disposed of by the Government otherwise than to the railroad company; and they contain an abstract of all filings and entries actually permitted by the United States land officers, without regard to whether, in our opinion, lawfully or unlawfully permitted.

(The books are marked "Exibits 2, 3, 4, 5, 6, and 7. Clement Bennett special examiner.")

Mr. HALL: The plaintiff objects to the introduction of Defendant's Exhibits marked 2, 3, 4, 5, 6 and 7, on the grounds, first that the evidence contained therein is incompetent, irrelevant and immaterial; second, that said books appear to be copies of originals, and are not the best evidence. This objection, however, will be

withdrawn with the approval of the Attorney General of the United States first being obtained.

Mr. SINGER: In support of our claim that these copies are primary evidence, under the circumstances, being the best and only evidence available to the defendants—the originals being in the custody of the complainant, and no offer having been made to produce them—I wish to say: During February or March, 1898, I gave Mr. Schnabel, assistant United States attorney for Oregon and of attorneys in this case, a copy of the statement now offered as "Defendant's Exhibit No. 8," exhibiting the results shown by the defendant's land books about which I have testified, to be compared with the original public records relating to the lands subject of the statement; and it was then agreed between Mr. Schnabel and myself, with the approval of United States Attorney Murphy, that no objection would be interposed to our records, or testimony therefrom, unless
142 comparison in the General Land Office showed the statement given by him to be materially different from the results shown by the original records of the United States. This understanding was reached after a full discussion of the situation, and mutual appreciation of the impracticability of the complainant producing the original records if demanded; the impossibility of the defendant producing the originals, and the impracticability of the defendant's procuring authenticated copies thereof—because of the enormous volume and expense of such copies. In view of the objections now made by counsel, we demand that the complainant make answer under oath or certificate of its proper officers, whether the statements to be hereinafter introduced as part of the testimony of F. C. Radcliffe are true and correct as such matters are shown by the original records, stating in such answer in what respect and to what extent, if at all, such statements are incorrect; or that the complainant produce the original records of surveys, filings, entries and other dispositions and reservations of odd sections within the limits of the said Oregon & California and Oregon Central land grants, together with the maps of limit lines thereof. And we now give notice that upon failure of the complainants to make such answer, or to produce the said original records, within a reasonable time, we will ask an order of this court admitting the testimony taken at this hearing *nunc pro tunc*, with the same effect as if taken after notice to produce the said original records.

(The statement referred to by the witness is marked "Defendant's Exhibit 8. Clement Bennett, special examiner.")

143 Cross-examination.

Mr. HALL:

Q. Mr. Singer, for what purpose were those books and abstracts made; that is to say, were they made for the private use of defendant in dealing with its lands obtained under the grants referred to, or were they made with a view to being used as exhibits in suits or actions between the United States and defendant relative to these granted lands?

A. They were made exclusively for the use of the company in transacting its business, by selection and otherwise, with the General Government, and by sale and otherwise with its purchasers. At that time there was no suit pending by the Government against the company involving these land grants, and the books were not prepared with any view of being introduced in evidence in any case. In fact, litigation was not thought of in making them.

Q. Were these books prepared under you immediate supervision and direction?

A. They were. I did a very large share of the original work of abstracting personally, and checked up, from the original abstracts personally; being personally present during the time they were made, in the Oregon land offices.

Q. What is your judgment at this time, Mr. Singer, as to whether or not these books are accurate and correct copies of the original.

A. In my opinion, they are remarkably correct. A few instances have been found of errors, but the errors likely to occur in them are
of further loss by some entry in the land office which we
144 overlooked. But few others have been found in our experiences, doing business from our books.

Q. Would it be possible, or probable, that the said books and abstracts would show a greater loss of lands within either place or indemnity limits than has actually occurred to defendant?

A. It is possible, but not probable. Each abstract is of a filing or an entry, and of the items of such filing or entry, and it is not at all likely that we would have filings and entries on our abstracts not shown by the land-office records; although it is probable that a filing or entry—or several, for that matter—may have escaped observation, so that I would expect any errors in the books to result in a greater loss to the company than that shown by our abstracts.

WM. SINGER, JR.

Testimony of F. C. Radcliffe.

F. C. RADCLIFFE, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Mr. SINGER:

Q. What is your occupation?

A. Clerk in charge of the title books and records in the office of Mr. William H. Mills, land agent for the Oregon & California Railroad Company.

Q. Are the books about which I testified, marked for identification as "Defendant's Exhibits No. 2 to No. 7," in your custody?

A. They are.

Q. Is the map showing the limit lines of the Oregon &
145 California and Oregon Central land grants, marked for identification as "Defendant's Exhibit No. 1," also in your custody?

A. It is.

Q. Have you also in your custody the tract books and lieu books of the Oregon Central land grant, about which I testified?

A. Yes, sir.

Q. Do those lieu books, in connection with the map, "Defendant's Exhibit No. 1," disclose the quantity of lands granted to the Oregon & California Railroad Company, and to the Oregon Central Railroad Company, with the quantities of land within the primary and indemnity limits of those two grants disposed of by the Government otherwise than to the railroad company?

A. They do.

Q. Have you a statement of the quantity of lands granted under those two grants respectively, and the quantity of lands disposed of by the Government within the primary and indemnity limits thereof?

A. Yes, sir.

Q. Will you please give to the examiner, to be entered by him as part of your testimony, a statement of the condition of the Oregon & California grant in respect of quantity granted and quantity within the grant, to supply the amount granted, as shown by the record books mentioned?

A. Yes, sir, I will.

Mr. HALL: I object to the question as incompetent, irrelevant and immaterial, and I also object to the witness testifying from the record.

(The statement handed in by the witness is as follows:)

146 *Status of the Oregon and California Grant.*

February 20, 1899.

Primary limits:

Total acres in grant, surveyed	3,419,283.80
Total acres in grant, unsurveyed	396,555.00
Total area of primary grant	3,815,838.80

Disposed of by the United States Otherwise Than to the O. & C. R. R. Co.

Finally disposed of by pre-emption, homestead, donation and mineral entries and patents; swamp and State selections, approvals and patents; wagon-road approved lists and patents; adjudged mineral land; and covered by pre-emption and homestead filings and donation notifications of record and uncanceled at date of definite location or date of grant		1,730,566.14
147 Within limits of wagon-road, grants, not approved to the wagon-road companies		13,366.08

Within limits of unsurveyed mining claims of which segregation surveys are required, the acreage of the legal subdivision being	277.14	
Unsurveyed lands within limits of wagon-road grants	2,680.00	
Total acres disposed of		1,746,889.36
Remainder apparently clear to R. R. Co.		2,068,949.44

Status of the Oregon and California Grant.

February 20, 1899.

Indemnity limits:

Total acres, surveyed	1,174,637.29
Total acres, unsurveyed	611,030.00
Total area of indemnity grant	1,785,667.29

148 *Disposed of by the United States Otherwise Than to the O. & C. R. R. Co.*

Finally disposed of by pre-emption, homestead, donation and mineral entries and patents; swamp and State selections, approvals and patents; wagon-road approved lists and patents; set apart for Indian reservations; adjudged mineral land; and covered by homestead and pre-emption filings and donation notifications of record and uncanceled	276,253.22	
Within limits of wagon-road, grants, not approved to the wagon-road companies	1,360.12	
Within limits of forest reservations not patented to R. R. Co.	34,847.23	
Within limits of unsurveyed mining claims of which segregation surveys are required, the acreage of the legal subdivisions being	197.63	
Unsurveyed lands within limits of forest reservations and wagon-road grants	182,200.00	
Total acres disposed of		494,858.20
Available to satisfy deficiency in primary grant		1,290,809.09

149 *Status of the Oregon and California Grant.*

February 20, 1899.

Summary:

Total area in primary limits		3,815,838.80
Total acres clear to Co. primary	2,068,949.44	
Total acres clear to Co. indemnity	1,290,809.09	
Total available for satisfaction of grant		3,359,758.53
Net deficiency		456,080.27

Note.

In the foregoing statements, unsurveyed lands are estimated at 640 acres to the section.

Mr. SINGER:

Q. According to this statement, I observe that the net deficiency of the Oregon & California grant, because of dispositions of land made by the Government otherwise than to the company, is 456,080.27 acres at this time. About what was the quantity, if you can state it, lost to the company in that way in excess of the undisposed of lands within the primary and indemnity limits of the grant at the time the definite location of the road was perfected?

150 Mr. HALL: Same objection.

A. I have not the figures to give that amount exactly.

Mr. SINGER:

Q. Can you state it approximately?

A. I think not to exceed 50,000 acres.

Q. Then, the deficit at the time the definite location of the road was completed was within about 50,000 acres of what is shown by this statement that you have submitted to the special examiner?

A. Exclusive of the amount in the forest reservation.

Q. Does this statement include the lands involved in the suit by the United States against the company to try title to the land in the Northern Pacific overlap, as railroad lands or as lost lands?

A. As railroad lands, not lost.

Q. You have in your statement here counted all that land as belonging to our company and not lost to it?

A. Not lost to it by reason of the Northern Pacific grant. There may possibly be a little here and there that is lost to it through filings.

Q. Have you a statement of the quantity granted and the quantity disposed of by the Government otherwise than to the company within the limits of the Oregon Central grant?

A. I have.

Q. Please give that to the examiner to be copied into the record as part of your testimony.

A. I will.

Mr. HALL: Same objection.

(The statement handed in by the witness is as follows:)

151 *Status of Oregon Central R. R. Grant.*

February 20, 1899.

Primary limits:

Total acres in primary grant	408,939.54
Disposed of by the United States Otherwise Than to the O. C. R. R. Co., to wit:	
Finally disposed of by pre-emption, homestead and donation entries and patents; swamp and State selections, approvals and patents by O. & C. R. R. Co. selections and patents, and covered by homestead and pre-emption filings and donation notifications of record and uncanceled at date of grant or date of definite location	311,691.31
Remainder apparently clear to R. R. Co	97,288.23

Status of Oregon Central R. R. Grant.

February 20, 1899.

Indemnity limits:

Total acres in indemnity grant	114,885.83
Disposed of by the United States Otherwise Than to the O. & C. R. R. Co., to wit:	
Finally disposed of by pre-emption, homestead and donation entries and patents; swamp and State selections, approvals and patents, and covered by homestead and pre-emption filings and donation; notifications of record and uncanceled	76,323.64
Available to satisfy deficiency in primary grant	38,562.19

152 *Status of Oregon Central R. R. Grant.*

February 20, 1899.

Summary:

Total area in primary limits		408,939.54
Total area clear to Co. primary limits	97,288.23	
Total area clear to Co. indemnity limits	38,562.19	
Total available for satisfaction of grant		135,850.42
Net deficiency		273,089.12

Mr. SINGER:

Q. Did you prepare a statement about one year ago as to the condition of the Oregon & California grant similar to the one you have just handed the special examiner?

A. Yes, sir.

Q. Do you remember about what date you prepared that other one?

A. My recollection now is that I have prepared two, one about a year ago, and one about a year and a half. One in May, 1897. That was the first one.

Q. The one prepared in May, 1897, had nothing to do with this suit?

A. No, sir.

Q. It was prepared for the purposes of the company, independent of any litigation?

A. Yes, sir.

153 Q. Did you prepare the statement I now offer you, bearing date February 14, 1898, marked "Defendant's Exhibit No. 8"? (Showing.)

A. Yes, sir.

Q. Do you remember whether you made more than one copy of it?

A. I did; I made two—at least two.

Q. At whose request did you make that?

A. At yours.

Q. Is there any difference in the net deficiency of the Oregon & California grant, shown upon this statement of February 14, 1898, and that shown upon the statement which you have just submitted?

A. There is.

Q. To what is the difference due?

A. It is due to the fact that in the statement of February 14, 1898, was included as lost from the primary limits, lands within the forest reservation. That has been left off of the present statement, the statement of February 20, 1899.

Q. That was erroneously put upon the other statement, then. I called your attention to the fact, did I not, that it did not belong there?

A. Yes, sir.

Q. Is there any other cause of a difference between the net showing of the two?

A. I think no other, except possibly a few errors which have been corrected, and some lands decided mineral by the Commissioner during the past year; possibly a very few filings allowed in the indemnity limits that are included in the statement of February 20, 1899.

Q. As a matter of fact, has the Government disposed of any odd-numbered sections during the past year within the limits of the Oregon & California grant, not covered by any filing theretofore?

A. I think not.

154 Q. Have no entries of indemnity lands been made during the past year in Oregon?

A. I stated that there might be a very few. My recollection is, there have been very few during the past year. It would not exceed 1,000 acres, perhaps.

Q. Have you now any in mind that you can name?

A. No, sir; I have not.

Q. Within the past three years, have any entries been permitted under the pre-emption or homestead laws by the United States, of lands constituting parts of odd-numbered sections within the primary or indemnity limits of the Oregon & California grant?

A. There have.

Q. To about what extent?

Mr. HALL: Same objection.

A. I should say 6,000 or 7,000 acres.

Q. Do you prepare the selection lists for submission to the Land Department of the United States, to procure the issue of patent for lands in the Oregon Central and Oregon & California grants?

A. Yes, sir.

Q. From what data do you prepare those lists?

A. From the tract books and adverse claims books, taken in conjunction.

Q. The books prepared by me, about which I have been testifying?

A. Yes, sir.

Q. Has your experience proved those books to be accurate or inaccurate?

A. Accurate.

Q. Accurate to a degree of excellency, or merely casually accurate?

A. Accurate to a degree of excellency, I should say. I found very few errors that have come under my observation. They amount to very little in number or point of acres.

155 Q. Were those errors in the nature of finding filings and entries in the land office not disclosed by my books, or were they in the nature of entries and filings reported on my books which did not exist?

A. In the nature of entries and filings that were not disclosed by the land-office records, and were, therefore, omitted from the tract books as made up by you.

Q. Speaking of errors found generally, is it not true that they consisted of filings and entries shown upon the Land Office books in Washington, which were not disclosed by the United States land office books in Oregon?

A. Yes, sir.

Cross-examination.

Mr. HALL:

Q. How did you arrive at the total number of acres in the primary grant which you have testified as being 3,815,838.80—that is, being the grant known as the Oregon & California grant?

A. I took the acreage from the tract books prepared under Mr. Singer's supervision, as far as lands were surveyed. There are a number of townships up there still unsurveyed, and as to the acreage of the unsurveyed townships or portions of townships, I estimated the acreage at the rate of 640 acres per section.

Q. That is, you estimated the entire area of all the odd sections within twenty miles on each side of the road-bed of said company?

A. Not all; only the unsurveyed sections were estimated. The others we had the actual acreage of.

Q. I mean, to determine the number of acres within the primary grant, you included all of the lands within the odd sections, within the limits of the primary grant?

156 A. Yes, sir; as shown upon the limit-line map, "Defendant's Exhibit No. 1," about which I testified.

Q. How did you arrive at the deficit within the odd-numbered sections or number of acres lost to the company within the primary limits of the Oregon & California grant?

A. From the records made by Mr. Singer, taking the lands first that were patented by the Government to others. Then taking lands that were in the wagon-road approved lists, lands adjudged mineral, lands finally disposed of by entries where they were not patented, and lands covered by homestead or pre-emption filings, or donation notifications, that were of record and uncanceled at the date of the company's grant, or at the date of the filing of map of definite location, and adding those together, they produce the result.

Q. Then you have proceeded upon the theory that the Oregon & California Railroad Company, and its successors in interest, were entitled to a number of acres equal in amount to the whole number of acres contained in odd sections within the primary limits?

A. Yes, sir.

Q. Whether the same had been disposed of by the Government prior to the time of the attaching of the Oregon & California Railroad Company's grant, or subsequent thereto?

A. Yes, sir.

Q. I will ask you whether or not, in arriving at the number of acres within the indemnity limits of the Oregon & California grant, that you pursued the same methods.

A. Yes, sir.

157 Q. And in arriving at the number of acres disposed of within the said indemnity limits, you have estimated and taken into account all lands that have been disposed of by the Government therein to wagon-road companies, to pre-emption and homestead settlers, and lands that had been adjudged mineral lands, and lands set apart for Indian reservations?

A. I have.

Q. Did you include in that report, as lands lost to the company, the lands here in controversy in cases Nos. 2,272, 2,273, 2,405 and 2,422?

A. I have not.

Q. I understand you to say you did not include the lands in forest reservations.

A. Not as lost in the primary limits, but as lost within the indemnity limits.

Q. And the same would be true so far as your method of computation is concerned with regard to the Oregon Central railroad grant?

A. Yes, sir.

Q. In each and every particular?

A. Yes, sir.

Q. I will ask you whether or not, in your figures, the lands disposed of by the United States, otherwise than to the Oregon & California Railroad Company, you have included the lands described in cases Nos. 2,405 and 2,422, circuit court of the United States for the district of Oregon?

A. No, sir, I have not included them as lost.

Q. How do you arrive at the number of acres in the unsurveyed tracts under each of these grants?

A. I know the lands that are unsurveyed, and estimated them at the rate of 640 acres per section.

Q. How do you determine the number of sections there
158 will be?

A. I have a list of the lands within the grant that are unsurveyed, that is gathered from the records of the surveyor general at Portland.

Q. What records do they have of such lands that are not surveyed? How do they describe them?

A. I hardly know how to answer that question, except that if the township is not surveyed at all, there is no plat of it, and in computing the acreage of the odd-numbered sections, I multiply 18 by 640. There are eighteen odd-numbered sections in a township. If any portion of a township remains unsurveyed, the United States plat in the surveyor general's office also shows that.

Q. Have all of the township lines been run within the indemnity limits of the said grants?

A. No, sir.

Q. Then, how do you determine how many townships that will be?

A. From projecting the lines of other townships surrounding the unsurveyed townships.

Q. How do you arrive at the distance?

A. From the map; by observation. I do not exactly understand how to answer that question, for the reason that I am not a surveyor.

Mr. SINGER: I will testify in regard to that.

Mr. HALL:

Q. Mr. Radcliffe, in computing the lands lost to the railroad company, or as lands disposed of by the Government, have you taken into account and deducted lands within the indemnity limits not

patented to the company, upon which settlers have filed either homestead or pre-emption?

A. If the filing has been allowed, and is still in force and uncanceled, I have treated the lands thereof as if lost—unless they were patented to the company.

159 Redirect examination.

Mr. SINGER:

Q. The filings just spoken of in the indemnity limits, which you treated as if lost; are they filings which have been made by volunteers, or been permitted by the General Land Office?

A. I do not understand what you mean exactly by "volunteers."

Q. Are filings by pre-emptioners or homesteaders permitted without notice to the company, a trial, or some decision by the General Land Office?

A. They are, I think, in a great many instances, in the indemnity limits.

F. C. RADCLIFFE.

WILLIAM SINGER, JR., recalled.

The WITNESS: I am familiar with the system of public surveys, and am sufficiently familiar with surveying to estimate areas, correct field-notes, and do office work in the surveyor general's office. The system of public surveys is deduced on a decimal scale from lines of latitude and longitude; that is, 60 miles make a degree, 6 miles make a township, and ten townships make a degree of latitude or longitude. Standard lines are established on half degrees, and corrections for the curvature of the earth in lines of longitude are corrected on the standard lines, and similar latitudinal corrections are made on meridian lines; hence, if township 1 south, 1 east, is surveyed, and township 4 south, 1 east, is unsurveyed, I know that, under the system of public surveys, township 2 south, 1
160 east, and 3 south, 1 east, unsurveyed, have intermediate existence—because, geographically, the earth's surface exists between the surveyed townships 1 south and 4 south. A section of land is one mile square, contains 640 acres, and there are 18 odd sections in a township; hence, the quantity granted in an unsurveyed township is, presumably, 18 times 640 acres. It is true the odd sections are said to be incapable of identification before survey—but the surface of the earth there, and so are the odd sections, the same before as after the survey.

WM. SINGER, JR.

Certificate of Examiner to Depositions.

I certify that the foregoing testimony was taken in pursuance of the stipulation prefixed hereto, on February 20th, 1899, at the office of Wm. Singer, Jr., rooms 61 and 62, Union Trust building, San Francisco, California in the presence of myself and the attorneys for the respective parties; that before giving his testimony each

of the witnesses whose testimony appears in the foregoing record was by me duly sworn to tell the truth, and nothing but the truth, in the foregoing-entitled causes; that such testimony was fully, truly and correctly taken in shorthand and transcribed by me, and thereafter each of the witnesses read and subscribed his own testimony as so taken and transcribed; and that I have retained the said testimony for delivery by my own hand to the court for which it was taken.

During the taking of the said testimony there were exhibited in evidence a certain map and books, marked by me as Defend-
161 ant's Exhibits Nos. 1 to 7, inclusive; also a certain paper marked by me as Defendant's Exhibit No. 8 which last-named exhibit accompanies record. The Exhibits Nos. 1 to 7, inclusive were withdrawn, by consent of the respective attorneys, after being marked by me for identification.

I further certify that I am not attorney nor counsel for either or any of the parties to the said causes, nor in anywise interested in the result thereof.

Dated, made, and signed by me on March 3d, 1899.

CLARENCE BENNETT,
Special Examiner.

DEFENDANT'S EXHIBIT No. 8.

(Clarence Bennett, special examiner.)

Status of the Oregon and California Grant.

Feb. 14, 1898.

Primary limits:

Total acres surveyed		3,379,527.68
Total acres unsurveyed, estimated		437,115.
Total area, primary grant		3,816,642.68

162 *Disposed of by the United States Otherwise Than to the O. & C. R. R. Co.*

To adverse claimants, approved to wagon-road Cos., and decided to be mineral	1,728,621.04
Within unsurveyed mining claims where segregation survey is required, the legal subdivisions amounting to	2,681.74
In mineral contests still undecided	1,069.12
Within limits of forest reservation not patented to company	7,478.63
Within limits of wagon-road grants, but not approved to the wagon-road companies	14,526.27

Within limits of wagon-road grants and United States forest reservation, still unsurveyed, estimated	13,240.	
Total disposed of		1,767,616.80
Remainder apparently clear to Co		2,049,025.88
Indemnity limits:		
Total acres surveyed	1,120,557.36	
Total acres, unsurveyed, estimated	663,830.	
Total area, indemnity grant		1,784,387.36

163 *Disposed of by the United States Otherwise Than to the O. & C. R. R. Co.*

To adverse claimants, approved to wagon-road Cos., in Indian reservation and decided mineral	261,447.44	
Within unsurveyed mining claims where segregation survey is required, the legal subdivisions amounting to	197.63	
Within limits of forest reservations, not patented to Co	34,607.23	
Within limits of wagon-road grants, but not approved to the wagon-road companies	16,805.90	
Within limits of wagon-road grants and forest reservations, unsurveyed, estimated	182,200.	
Total disposed of		495,258.20
Available to satisfy deficiency		1,289,129.16

164 *Summary.*

Total area in primary limits		3,816,642.68
Total acres clear to Co. in primary limits.	2,049,025.88	
Total acres clear to Co. in indemnity limits	1,289,129.16	
Total available for satisfaction of grant		3,338,155.04
Net deficiency		478,487.64

Depositions filed March 10, 1900.

J. A. SLADEN, *Clerk.*

Clerk's Certificate to Transcript.

UNITED STATES OF AMERICA, *District of Oregon,* } ss:

I, J. A. Sladen, clerk of the circuit court of the United States, for the district of Oregon, in obedience to the foregoing order allowing appeal, do hereby certify that the foregoing pages, numbered from 3 to 163, inclusive, contain a full, true, and correct transcript of the record and proceedings had in said court, in cause No. 2,272, The United States, plaintiff, against The Oregon and California Railroad Company, defendant and appellant, as the same appear of record and on file in my office and custody.

165 And I further certify that the cost of the foregoing transcript is seventy-three and $\frac{40}{100}$ dollars, and that the same has been paid by the Oregon and California Railroad Company, appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, at Portland, in said district, this 30th day of August, 1900.

[SEAL.] J. A. SLADEN, *Clerk.*

(Endorsed:) No. 641. In the United States circuit court of appeals for the ninth circuit. The Oregon and California Railroad Company, appellant, *vs.* The United States, appellee. Transcript of record. Appealed from the circuit court of the United States for the district of Oregon. Filed September 1st, 1900. F. D. Monckton, clerk.

166 In the United States Circuit Court of Appeals for the Ninth Circuit.

THE OREGON AND CALIFORNIA RAILROAD COMPANY, Appellant, *vs.* THE UNITED STATES, Appellee. } No. 641.

THE OREGON AND CALIFORNIA RAILROAD COMPANY, Appellant, *vs.* THE UNITED STATES, Appellee. } No. 639.

THE OREGON AND CALIFORNIA RAILROAD COMPANY, Appellant, *vs.* THE UNITED STATES, Appellee. } No. 640.

Appeals from the circuit court of the United States for the district of Oregon.

Before Ross and Morrow, circuit judges, and Hawley, district judge.

The COURT:

On the authority of Hewitt *v.* Schultz, Supreme Court Reporter, February 15, 1901, p. 309: Grinnell *v.* R. R. Co., 103 U. S. 739: St.

Paul etc. R. R. Co., *v.* Winona etc. R. R., 112 U. S. 720: Sioux City etc. R. R. *v.* Chicago, Milwaukee etc. R. R., 117 U. S. 406; U. S. *v.* Missouri, Kansas & Texas R. R., 141 U. S. 374, the judgment in each of the above-entitled cases is affirmed.

(Endorsed:) Opinion. Filed May 16, 1901, F. D. Monckton, clerk.

167 United States Circuit Court of Appeals for the Ninth Circuit.

THE OREGON AND CALIFORNIA RAILROAD COMPANY, Appellant,
v.
THE UNITED STATES, Appellee.
} No. 641. Decree.

Appeal from the circuit court of the United States for the district of Oregon.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Oregon, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed and entered May 16, 1901, F. D. Monckton, clerk.

168 At a stated term, to wit: the October term A. D. 1901 of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Wednesday the 9th day of October in the year of our Lord one thousand, nine hundred and one.

Present: Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable William W. Morrow, circuit judge.

THE OREGON AND CALIFORNIA RAILROAD COMPANY, Appellant,
v.
THE UNITED STATES, Appellee.
} No. 641.

Upon motion of William Singer, Jr., Esquire, counsel for the appellant, it is ordered that an appeal to the Supreme Court of the United States be and the same is hereby allowed; and that the amount of bond on appeal be and the same is hereby fixed in the sum of $300.

169 In the United States Circuit Court of Appeals, Ninth Circuit.

OREGON & CALIFORNIA RAILROAD COMPANY, Defendant and Appellant,
vs.
UNITED STATES, Complainant and Appellee.
} No. 641. In Equity.

Petition on Appeal.

The above-named defendant, conceiving itself aggrieved by the decree made and entered herein on May 16th 1901, appeals therefrom to the Supreme Court of the United States, for the reasons specified in its assignment of errors filed herewith; and the defendant prays that its appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Your petitioner further prays, that upon giving a good and sufficient bond to be approved by this court, all proceedings in this cause, and upon the said decree, may be stayed pending its appeal.

WM. D. FENTON &
WM. SINGER, JR.,
Attorneys for the Defendant.

WM. F. HERRIN,
Counsel for the Defendant.

170 *Order Allowing Appeal.*

The foregoing claim of appeal, and prayer for supersedeas, are allowed and granted; the supersedeas to take effect upon the filing of a good and sufficient bond in the sum of five hundred dollars, conditioned that the appellant shall prosecute its appeal to effect, and answer all damages and costs if it fails to make its appeal good.

It is further ordered that a transcript of the record, proceedings and papers upon which the said decree was made, under the seal of this court and the hand of its clerk, be sent to the Supreme Court of the United States.

San Francisco, October 15th, 1901.

WM. W. MORROW,
Circuit Judge.

(Endorsed:) Petition for appeal and order allowing appeal. Filed October 16, 1901, F. D. Monckton, clerk.

171 In the United States Circuit Court of Appeals, Ninth Circuit

OREGON & CALIFORNIA RAILROAD Company, Defendant and Appellant, vs. UNITED STATES, Complainant and Appellee.	No. 641.	In Equity.

Assignment of Errors.

The above-named defendant, by the undersigned, its attorneys and counsel, in connection with its petition for allowance of appeal herein, says that the decree in the above-entitled cause, made and entered on May 16th 1901, is erroneous and against its just rights in the following particulars; that is to say:

It is stipulated by counsel, and found in the decree, that none of the lands in suit are mineral lands, nor included by any exception or reservation from the indemnity grant made to the defendant by the act of July 25th 1866, except in so far as, if at all, they were excepted or reserved therefrom by reason of the several filings and settlement claims set forth in the bill and decree (20th item, decree); in other words, it is, in effect, agreed by the parties and found by the court, that the lands in suit were properly patented to the defendant unless the issue of such patent was rendered unlawful by those filings and settlement claims. In adjudging and decreeing the defendant's patent null, void, set aside and canceled, and
172 the lands thereof restored to the United States, the court erred as follows:

1st. Because the said act of July 25th 1866, granted *in præsenti*, and immediately transferred unto and conferred upon the defendant, a vested right to select the lands in suit in part satisfaction of the amount of land granted; and all of the said filings were made, and settlement initiated, subsequent to the said grant, subsequent to definite location of the defendant's railroad, and subsequent to the construction and acceptance of the defendant's railroad.

2nd. Because, as stipulated and found, defendant's map of survey and definite location was duly accepted and approved by the Secretary of the Interior on March 26th 1870. Thereupon, on that date, the lands in suit were, by the force and effect of the said act, reserved, set apart and withdrawn for the purposes of, and to satisfy, the defendant's grant, and have ever since so remained; hence none of said lands were public lands, nor subject to the said settlements or filings, at any of the times when such settlements or filings were made.

3rd. Because, as shown by defendant's undisputed evidence, all the odd sections, and parts of sections, within both primary and indemnity limits of the defendant's grant, not finally disposed of by the United States otherwise than to the defendant, are insufficient to make or equal the amount or quantity of land granted. Therefore all the lands in suit were granted to the defendant by force and

effect of the said act, without any selection thereof being required; hence none of the lands in suit were public lands, nor subject to the said settlements or filings, at any of the times when such settlements or filings were made.

4th. Because, as stipulated and found, the defendant selected the lands in suit in accordance with the instructions and direc-
173 tions of the Secretary of the Interior; and at all the times when such selections were filed and approved by the register and receiver of the United States Land Office, none of the said filings or entries had been tendered or made. Hence all the preemption and homestead filings set forth in the bill and decree were unlawfully permitted, and were null and void *ab initio*.

5th. Because, as stipulated and found, the defendant's map of definite location was accepted and approved by the Secretary of the Interior, of the lands in suit, was received at the proper local land office of the United States on April 25th 1870; hence none of the settlement claims set forth in the bill and decree are within the provisions of the act approved April 21st 1876, referred to in the said bill.

6th. Because, as stipulated and found, the defendant's railroad from Portland to Roseburg, through and beyond all the lands in suit, was fully constructed and equipped prior to December 4th 1872, and continuously after that date was operated for all the purposes contemplated by and provided for in the said granting act; and that portion thereof extending through and beyond all the lands in suit except the tract described in the "39th item" of the decree, was finally accepted by the United States prior to March 12th 1872. For these further reasons the said act approved April 21st 1876, is in nowise applicable to the settlement claims set forth in the bill and decree.

7th. Because, as stipulated and found, each homestead claim set forth in the bill and decree was filed during the year 1892; hence none of such homestead claimants can lawfully allege settlement prior to the act of Congress approved on May 14th 1880 (21 U. S. Stat. 141).

8th. Because, as shown by the facts stipulated and found, the United States has no such interest in the relief prayed for or given by the decree as will maintain this suit or sustain the decree.
174 *9th.* Because, as shown by the facts stipulated and found, the decree should have been for defendant as prayed, with costs.

Wherefore the defendant (appellant) prays that the said decree be reversed; and that the circuit court of the United States for the district of Oregon be directed to enter a decree dismissing the said suit.

WM. D. FENTON &
WM. SINGER, JR.,
Attorneys for the Appellant.

WM. F. HERRIN,
Counsel for the Appellant.

(Endorsed:) Assignment of errors. Filed October 16, 1901, F. D. Monckton, clerk.

175 In the United States Circuit Court of Appeals, Ninth Circuit.

OREGON & CALIFORNIA RAILROAD COMPANY, Defendant and Appellant, *vs.* UNITED STATES, Complainant and Appellee. } No. 641. In Equity.

Bond on Appeal.

We, N. T. Smith and J. H. Sharpe, both of the city and county of San Francisco, State of California, are held and firmly bound unto the United States of America, in the sum of five hundred (500) dollars, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The above-named defendant and appellant has been allowed an appeal to the Supreme Court of the United States, and a supersedeas, from the decree entered in the above-entitled court and cause on May 16th 1901; and the condition of this obligation is, that if the appellant shall prosecute its said appeal to effect, and answer all damages and costs if it fails to make its appeal good, then this obligation to be void; otherwise to remain in full force.

Dated, signed and sealed on October 15th 1901.

N. T. SMITH. [SEAL.]
J. H. SHARPE. [SEAL.]

176 Acknowledged before me on October 15th 1901.

[SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, *City and County of San Francisco,* } *ss:*

N. T. Smith and J. H. Sharpe, being duly sworn, each for himself, deposes and says: I am a householder in the northern district of California, and am worth the sum of five hundred (500) dollars, exclusive of property exempt from execution, and over and above my just debts and liabilities, in property within said district.

N. T. SMITH.
J. H. SHARPE.

Subscribed and sworn to before me on October 15th 1901.

[SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

The foregoing bond is approved.

WM. W. MORROW, *Judge.*

(Endorsed:) Bond on appeal. Filed October 16, 1901, F. D. Monckton, clerk.

177 United States Circuit Court of Appeals for the Ninth Circuit.

THE OREGON AND CALIFORNIA RAILROAD COMPANY, Appellant,
v.
THE UNITED STATES, Appellee. } No. 641.

Certificate of Clerk of C. C. A. to Transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing 176 pages, numbered from one (1) to 176, inclusive, to be a true copy of the record, and of the assignment of errors, and of all proceedings in the above-entitled case as the same appear of record in my office, and that the same together constitute the transcript upon appeal to the Supreme Court of the United States herein.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 28th day of October, A. D. 1901.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

178 UNITED STATES OF AMERICA, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on December 12th 1901, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the ninth circuit, wherein The Oregon & California Railroad Company are appellants and The United States of America is appellee, to show cause, if any there be, why the decree rendered on May 16th 1901, by the said United States circuit court of appeals against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of San Francisco, on October 15th 1901.

WM. W. MORROW, *Judge.*

Due service by copy of the foregoing citation admitted on October 21st 1901.

JOHN H. HALL,
M.,
United States Attorney for Oregon, of Counsel for the Appellee.

179 [Endorsed:] No. 641. U. S. circuit court of appeals, ninth circuit. Oregon & Cal'a Railroad Co. *vs.* United States. Citation. Filed October 23rd 1901. F. D. Monckton, clerk. Wm. Singer, Jr., N. E. corner Second and Mission streets, San Francisco, Cal. att'y for —

Endorsed on cover: File No. 18,308. U. S. C. C. of appeals, 9th circuit. Term No. 186. The Oregon and California Railroad Company, appellant, *vs.* The United States. Filed November 8th, 1901.